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WS- 01303A-05-0170

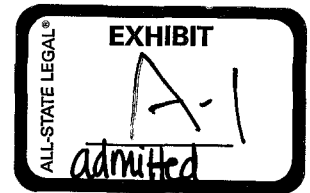
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**Docket Control**

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**July 22, 2005**

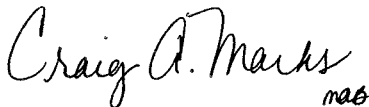
**Re: Arizona-American Water Company**  
**Docket No. W-01303A-05-0170**

Dear Sir or Madam:

Enclosed for filing are an original and 13 copies of the Joint Direct Testimony Of  
Clifford C. Groh And Brian K. Biesemeyer.

This filing is made in accordance with the June 17, 2005, Procedural Order in this  
matter.

Very truly yours,

  
mab

Craig A. Marks  
Corporate Counsel

Cc: ALJ Dwight D. Nodes  
Steven Olea  
Timothy Sabo

Enclosures

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF  
ARIZONA-AMERICAN WATER COMPANY FOR  
AN AFFILIATE AGREEMENT WITH  
AMERICAN WATER RESOURCES, INC.

DOCKET NO. W-1303A-05-0170

**JOINT DIRECT TESTIMONY  
OF  
CLIFFORD C. GROH  
AND  
BRIAN K. BIESEMEYER**

**JULY 22, 2005**

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## **EXECUTIVE SUMMARY**

Clifford C. Groh and Brian K. Biesemeyer testify as follows:

1. They discuss their education and professional experience.
2. They describe the Water Line Protection Program and the Sewer Line Protection Program and summarize the Service Agreement between Arizona-American Water Company ("Arizona American Water") and American Water Resources ("AWR").
3. They respond to Staff's direct testimony, accepting several of Staff's recommendations and agreeing that Arizona American Water will not provide customer information to AWR or otherwise support AWR's marketing of the Protection Programs. This agreement largely moots several of Staff's recommendations. They also provide copies of revised promotional material tailored for use in Arizona.

**I. INTRODUCTION**

**A. CLIFFORD C. GROH**

**Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD, PLEASE.**

A. My name is Clifford C. Groh. I am Director of Business Development and Operations for American Water Resources. My business address is 1025 Laurel Oak Road, Voorhees, New Jersey 08043

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE**

A. I received a Bachelor of Science Degree in Accounting from The Richard Stockton College of New Jersey and a Master of Business Administration Degree from Monmouth University. I was employed by Atlantic City Electric Company from 1980 through 1998 and have over 15 years experience in the functional areas of corporate risk, insurance and claims management and benefit plan asset management. In 1999, I was engaged as a consultant by American Water Resources ('AWR') to evaluate and make recommendations regarding the concept of developing a service line business. From 1999 through 2001, I developed, tested and implemented the Water Line Protection Program and established the internal infrastructure of systems, processes and procedures to operate the Program in the states of Pennsylvania, New Jersey and New York. In May 2002, I was hired by AWR as Business Development Manager and received a promotion in August 2003 to Director Business Development and Operations. Since joining AWR

1 in 2002, I have developed, tested and implemented the Sewer Line Protection Program  
2 and supported the further expansion of AWR's service line business into eight additional  
3 states.

4  
5 **Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES AS DIRECTOR**  
6 **BUSINESS DEVELOPMENT AND OPERATIONS**

7 A. I have primary responsibility for coordinating AWR's business expansion activities and  
8 overseeing the day-to-day operations of AWR's Programs. My duties include securing  
9 and maintaining compliance with all state legal and regulatory (utility/insurance) rules  
10 and requirements, and business support activities. In addition, I have responsibility for  
11 evaluating operational risk associated with repair services, promoting AWR's service line  
12 business to new markets, and evaluating/developing new service program offerings.

13  
14 **B. BRIAN K. BIESEMEYER**

15 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TELEPHONE**  
16 **NUMBER.**

17 A. Brian K. Biesemeyer, 15626 N. Del Webb Blvd, Sun City, AZ, 623-815-3125.  
18

19 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

20 A. I am employed by Arizona-American Water Company ("Arizona American Water" or the  
21 "Company") and I am the Network General Manager

1  
2 **Q. WHAT ARE YOUR RESPONSIBILITIES AS THE NETWORK GENERAL**  
3 **MANAGER?**

4 A. I am responsible for customer service, water distribution, and wastewater collection  
5 operations statewide serving over 131,000 customers.  
6

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

8 A. I received a Masters of Science in Civil Engineering, a Masters of Science in Mineral  
9 Economics, and a Bachelor in Science in Geological Engineering all from the University  
10 of Arizona in 1994, 1984, and 1982 respectively.  
11

12 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

13 A. I am a Registered Professional Engineer with a Proficiency in Environmental  
14 Engineering. I am also a Grade IV Arizona Department of Environmental Quality  
15 (ADEQ) Certified Operator in Water Treatment, Water Distribution, Wastewater  
16 Treatment, and Wastewater Collection. I have worked in the water industry for over  
17 twelve years in research, government, and the private sector. Prior to my current job, I  
18 was the Operations Manager for Arizona American Water's Central Operations, which  
19 included all operations in Maricopa and Santa Cruz County  
20

21 **Q. HAVE YOU HAD ANY OTHER RELEVANT PROFESSIONAL EXPERIENCE?**

1 A. I am a member of ADEQ's Operator Certification Committee, with the responsibility of  
2 providing recommendations, technical advise, and assistance to ADEQ concerning  
3 operator certifications, requirements impacting operators, and the overall operation of  
4 ADEQ's operator certification program

5  
6 **II. PURPOSE OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF YOUR JOINT TESTIMONY IN THIS CASE?**

8 A. On March 11, 2005, Arizona American Water filed with the Arizona Corporation  
9 Commission a copy of an affiliate agreement with AWR titled "Agreement for Support  
10 Services" ("Service Agreement"). A copy of the Service Agreement is attached to this  
11 testimony as Exhibit A. The purpose of the Service Agreement was to set forth the  
12 respective responsibilities of AWR and Arizona American Water concerning the Water  
13 Line Protection Program and the Sewer Line Protection Program in Arizona (may be  
14 referred to collectively as the "Protection Programs").

15  
16 On June 24, 2005, the Staff of the Arizona Corporation Commission ("Staff") filed the  
17 direct testimony of Linda A. Jaress and recommended against approving the Service  
18 Agreement as written, but did state that if the Commission determined that approval of  
19 the Service Agreement was appropriate, the Commission should adopt nine  
20 "recommendations and requirements." In this testimony we will first describe the  
21 Protection Programs and then respond to Ms. Jaress' testimony.

1  
2 **Q. WHY ARE YOU PROVIDING JOINT TESTIMONY?**

3 A. This case concerns a Service Agreement between two companies and how they will each  
4 participate in the Protection Programs. Neither of us can speak for the other's company.  
5 Splitting responsive testimony between us would have essentially doubled the amount of  
6 testimony and made it more difficult to follow. Also, this will allow us to appear together  
7 to be sure that all questions will be properly addressed at the upcoming hearing.  
8

9 **III. DESCRIPTION OF PROTECTION PROGRAMS**

10 **Q. WHAT ARE THE WATER LINE AND SEWER LINE PROTECTION**  
11 **PROGRAMS?**

12 A. Customers own their service lines, although many customers may not be aware of this  
13 fact or where the service lines are located. In the case of a water line, this is the line that  
14 runs from the water meter to the shut-off valve outside the house; in the case of the sewer  
15 line, this is the line that runs from the property line to the house. Problems can develop  
16 with these service lines through tree-root incursions, seasonal soil subsidence, aging, or  
17 other normal wear and tear causes. Locating a qualified contractor to repair these  
18 problems can be a frustrating process and the cost, which can be very expensive, is not  
19 typically covered by homeowner's insurance.  
20

1 Currently, when a problem develops in the customer's service line, the customer is  
2 responsible for making all necessary arrangements to have the line repaired and to pay all  
3 of the repair costs. AWR has developed a Water Line Protection Program and a Sewer  
4 Line Protection Program for residential customers that provides a convenient and cost-  
5 effective means for making repairs to customer-owned water service lines that leak or  
6 break or sewer service lines that become clogged or blocked due to normal wear and tear.  
7 Customers enrolling in the Programs pay a modest annual fee and in the event of a  
8 covered problem in the customer-owned portion of the line, AWR obtains the proper  
9 permits and makes arrangements to pay for necessary repairs, including basic site  
10 restoration, up to a stated program limit.<sup>1</sup>

11  
12 Repair services will be provided by AWR through the use of local independent, licensed,  
13 contractors who operate in or near an Arizona American Water district. The relationship  
14 between these contractors and AWR will be similar to the relationships contractors have  
15 with home-repair and installation services being offered by Home Depot and Sears. No  
16 Arizona American Water or AWR employees will be used to make any actual service line  
17 repairs.

18  
19 **Q. WHAT IS AMERICAN WATER RESOURCES?**

---

<sup>1</sup> A repair required because of damage caused to a service line by a smoke or dye test as a result of Arizona American's testing, of course, remains Arizona American's responsibility.

1 A. AWR is a subsidiary of American Water Works Company, Inc. and an affiliate of  
2 Arizona American Water.  
3

4 **Q. IS AWR AUTHORIZED TO DO BUSINESS IN THE STATE OF ARIZONA?**

5 A. Yes. AWR's authority to transact business in Arizona was granted on December 27,  
6 2002 by the Commission. AWR has a Certificate of Good Standing issued by the  
7 Commission dated June 28, 2004. The Arizona Department of Insurance has issued a  
8 permit to AWR, which states that AWR is qualified under A.R.S. § 20-1095-3 and  
9 authorized to transact business in the State of Arizona as a Service Company, as that term  
10 is defined in A.R.S. § 20-1095.  
11

12 **Q. PLEASE SUMMARIZE THE PRESENT SERVICE AGREEMENT BETWEEN**  
13 **AWR AND ARIZONA AMERICAN WATER.**

14 A. Under the terms of the Service Agreement, AWR will make the Programs available to  
15 Arizona American Water's qualifying residential customers and Arizona American  
16 Water will provide the following support services ("Services") for the Program:

17 a. **Distribution of Promotional Materials.** Arizona American Water will  
18 assist AWR in the distribution of informational and promotional materials regarding the  
19 Programs to its customers. From time to time, Arizona American Water may also  
20 distribute customer satisfaction surveys. AWR is solely responsible for all costs  
21 associated with these activities.



1           b.     **Repair Service Coordination.** If an Arizona American Water employee  
2     should determine, as a part of his/her normal duties, that a customer's service line is  
3     leaking or broken or sewer line is clogged or blocked, and that the customer has enrolled  
4     in the applicable Program, the employee will cause AWR to be notified.

5           c.     **Billing and Collecting.** A customer who enrolls in either or both of the  
6     Programs will be billed in equal installments on the periodic water or sewer bill from  
7     Arizona American Water. Arizona American Water's billing and payment services are  
8     provided by American Water Works Service Company ("Service Company"). Service  
9     Company will include the cost of the Program(s) as separate lines on the customer's  
10    water or sewer bill, will collect payments in the usual manner, and then forward the funds  
11    to AWR. AWR will pay Arizona American Water \$0.10 per customer per month for this  
12    service.

13  
14    **Q.     WILL AWR PAY ANY OTHER FEES TO ARIZONA AMERICAN WATER?**

15    A.     Yes. For any other Services rendered under the Service Agreement AWR will pay to  
16    Arizona American Water an amount equal to the greater of 115% of fully distributed  
17    costs incurred by Arizona American in providing the Services or the market price for  
18    such Services if one is ascertainable.

19  
20    **Q.     IS THE SERVICE AGREEMENT EXCLUSIVE?**

1 A. No. The Service Agreement is non-exclusive. Arizona American Water may contract  
2 with another party that wishes to provide similar services and AWR may contract with  
3 other investor-owned and municipal water and sewer utilities to offer the Protection  
4 Programs to their customers.

5  
6 **Q. IS THE SERVICE AGREEMENT IN THE PUBLIC INTEREST?**

7 A. Yes. The proposed transaction will not adversely affect Arizona American's provision of  
8 water or wastewater service. To the contrary, those customers who choose to enroll in  
9 the Programs will have an enhanced level of service and benefits in terms of convenience  
10 and potential cost savings in the event of required service-line repairs. It will also  
11 contribute to fixed costs, thereby benefiting Arizona American Water customers.  
12 Further, Arizona American Water's customers will not subsidize the costs of the  
13 Protection Programs. The terms of the Service Agreement assure that Arizona American  
14 Water will be fully reimbursed for the Services rendered to AWR.

15  
16 **Q. YOU HAVE BEEN DESCRIBING THE PRESENT SERVICE AGREEMENT;**  
17 **ARE THE COMPANIES WILLING TO AMEND THE SERVICE AGREEMENT**  
18 **TO ACCOMMODATE STAFF'S RECOMMENDATIONS?**

19 A. Yes. As discussed in the next section of our testimony, the companies are willing to  
20 amend the Service Agreement in certain respects to accommodate Staff's  
21 recommendations.

**IV. RESPONSE TO STAFF TESTIMONY**

**Q. HOW DO YOU RESPOND TO STAFF'S RECOMMENDATIONS?**

A. We will discuss each recommendation in greater detail, however, AWR and Arizona American Water accept certain of Staff's recommendations and are willing to modify the Service Agreement to achieve the goal of other recommendations, but in a different manner. In particular, the Company will agree to not provide any customer information to AWR or otherwise support AWR's marketing of the program. AWR will obtain a mailing list by other means and be responsible for marketing the Protection Programs. This should resolve many of the concerns expressed by Ms. Jaress.

**Staff Recommendation No. 1**

**Q. STAFF RECOMMENDED:**

*[T]he Agreement be modified to indicate that Arizona American should be compensated for its services at 115 percent of fully allocated costs or prevailing market prices, whichever is higher, and that at its next rate case, Arizona American should provide information and workpapers showing the calculation of the market price and fully allocated costs. This method would apply to all costs including billing and collection and replace the \$0.10 per bill amount.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

A. AWR and the Company disagree with this recommendation, in part, because we are reducing the scope of services provided by the Company under the Agreement. The costs to Arizona American Water will be minor under this program, consisting primarily of providing line items on a customer's bill that elects to sign up for one of the protection

1 programs. Arizona American Water's billing is handled by Service Company, which  
2 charges the Company for its share of billing costs.

3  
4 AWR has already paid for software to add a line on a bill, so there would be no  
5 additional charge to Arizona American Water for Service Company to be able to provide  
6 line items on customer bills. Arizona American Water expects that other costs would be  
7 minimal. Customers who sign up for either of the Protection Programs would be  
8 instructed to call American Water Resources' dedicated service representatives. As the  
9 Protection Programs become more popular, Arizona American Water would likely  
10 receive a few calls locally, which would be referred to AWR's service representatives.  
11 AWR will handle all collection matters.

12  
13 As discussed below, Arizona American Water will not be supporting AWR's distribution  
14 of promotional materials, so there will be no costs incurred by Arizona American Water  
15 to support AWR's marketing of the program.

16  
17 In 2004, Arizona American Water paid American Water Services a total of \$135,595 for  
18 billing services. Arizona American Water presently has approximately 130,000  
19 customers, so the total current billing cost per customer is approximately \$1 per year, or  
20 about \$.08 per month. Therefore, receiving \$0.10 per month per customer should more  
21 than compensate Arizona American Water for the negligible costs associated with

1 providing line items on customer bills and making referrals to AWR's service  
2 representatives.

3  
4 The cost to Arizona American Water of performing a study to calculate the fully  
5 allocated costs and market prices for these minimal services, as sought by Staff, could  
6 exceed the annual revenue (\$.10/customer/month) received by the Company for  
7 providing the expected services in the Service Agreement.

8  
9 **Staff Recommendation No. 2**

10 **Q. STAFF RECOMMENDED:**

11 *The Commission should require Arizona American, before disseminating*  
12 *customer-specific information to an affiliate or non-affiliate, to inform the*  
13 *customer regarding what information would be released and for what purpose.*  
14 *The customer must affirmatively respond before such information is disseminated.*  
15 *Non-response by the customer should not be considered consent. This*  
16 *requirement should not apply to requests from police agencies or subpoenas.*

17 **HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

18 A. AWR and Arizona American Water propose a modification that makes this  
19 recommendation moot. The Company will not provide any customer information to  
20 AWR or otherwise support AWR's marketing of the program. AWR will obtain a  
21 mailing list by other means. If a customer elects to sign up for one of the Protection  
22 Programs, AWR will provide the name of that customer and other pertinent information  
23 to Arizona American Water so that billing can be included as a line item on the  
24 customer's bill. AWR and the Company will amend the Service Agreement accordingly.

**Staff Recommendation No. 3**

**Q. STAFF RECOMMENDED:**

*[T]hat the Agreement be modified to omit Section 6.1.4 and any other section that might allow Arizona American and AWR to contract for additional services other than those specifically related to the water and sewer line Programs.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

A. AWR and the Company accepts this recommendation

**Staff Recommendation No. 4**

**Q. STAFF RECOMMENDED:**

*[T]hat any net income derived by Arizona American from the services it provides AWR for the Programs be considered above-the-line for ratemaking purposes.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

A. AWR and the Company accept this recommendation and note that if the Commission accepts the proposal of \$0.10 per month per enrolled customer that the net income would be equal to this amount.

**Staff Recommendation No. 5**

**Q. STAFF RECOMMENDED:**

*[T]hat Arizona American not endorse or promote the Programs and that the Agreement be modified to so reflect.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

1 A. AWR and the Company accept this recommendation. As stated above, Arizona  
2 American Water will not be supporting AWR's marketing of the Protection Programs.

3 **Staff Recommendation No. 6**

4 **Q. STAFF RECOMMENDED:**

5 *The initial life of the Agreement should be limited to three years. Extensions of*  
6 *the Agreement should be approved by the Commission.*

7 **HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

8 A. AWR and the Company agree to an initial term limit but believe that five years would be  
9 the appropriate term. AWR's experience in other jurisdictions is that it takes  
10 approximately three years to set up, market, and roll out the Protection Programs before it  
11 achieves significant market shares. Five years would allow Staff and the Commission to  
12 evaluate results from years three, four, and five, when there will be enough participants to  
13 provide meaningful data of Arizona American Water's costs to support the program.

14  
15 **Staff Recommendation No. 7**

16 **Q. STAFF RECOMMENDED:**

17 *The Commission reserves the right to examine the books and records of AWR in*  
18 *connection with the Programs.*

19 **HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

20 A. AWR and the Company do not understand the need for this recommendation. The  
21 Commission already has this right under the Affiliate Interest Rules.  
22

**Staff Recommendation No. 8**

**Q. STAFF RECOMMENDED:**

*The Agreement should be modified to include a definition of fully allocated or fully distributed costs as including direct costs, a contribution to common costs, and overhead.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

A. AWR and the Company accept this recommendation for unexpected service not covered by the customer charge to AWR of \$0.10 per month per enrolled at 115% of fully distributed costs.

**Staff Recommendation No. 9**

**Q. STAFF RECOMMENDED:**

*Arizona American and RWE should be ordered to file for appropriate waivers of the Rules.*

**HOW DO YOU RESPOND TO THIS RECOMMENDATION?**

A. AWR and the Company object to this response because we do not understand the need for this recommendation and Staff has not suggested any waiver filings that might be required in connection with this case.

**Q. IS THERE ANYTHING ELSE IN MS. JARESS' TESTIMONY TO WHICH YOU WOULD LIKE TO RESPOND?**

A. Yes. Attached Exhibits B (Water Line Protection Program) and C (Sewer Line Protection Program) are sample promotional materials that would be used by AWR in Arizona. The



1 name "Arizona American Water" appears only in the form of references to payment of  
2 Program fees via customer water bill and specific Program terms and conditions.  
3

4 **Q. SHOULD THE COMMISSION APPROVE THE SERVICE AGREEMENT AS**  
5 **YOU HAVE AGREED TO MODIFY IT AND SUBJECT TO THE CONDITIONS**  
6 **YOU HAVE ACCEPTED?**

7 A. Yes. AWR and the Company have agreed to significantly modify the Agreement and the  
8 promotional materials. AWR will not obtain customer information from the Company.  
9 These are all changes made in response to Commission Staff's concerns.  
10

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

## **EXHIBIT A**

**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

**March 1, 2005**

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**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

This Service Agreement, dated as of the 1st day of March, 2005 (the "Agreement"), is by and between the AMERICAN WATER RESOURCES, INC. (AWR), a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043, and ARIZONA AMERICAN WATER COMPANY (Utility), a corporation organized and existing under the laws of the State of Arizona, with its principal office located at 19820 North 7<sup>th</sup> Street, Suite 201, Phoenix, Arizona 85024.

WHEREAS, AWR provides certain services to utility customers, as more particularly described on Appendix A which is attached hereto and incorporated herein by reference, which list may be modified or amended from time to time by AWR (hereinafter the "Programs"); and

WHEREAS, Utility is the owner of a public water supply system; and

WHEREAS, many of Utility's residential customers may desire to and qualify to participate in one or more of AWR's Programs; and

WHEREAS, Utility desires to make certain or all of the Programs available to its customers upon the terms and conditions contained herein; and

WHEREAS, AWR desires to contract with Utility for certain customer support services for the Programs; and

WHEREAS, Utility possesses the necessary ability and experience to provide such customer support services and is willing to provide such services for the Programs upon the

terms and conditions contained herein; and

WHEREAS, it is the mutual desire of the parties to enter into this Agreement providing for the customer support for the Programs;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and subject to the terms and conditions herein stated, AWR and Utility agree as follows:

SECTION 1. Definitions.

The following words and phrases when used in this Agreement shall have the following meaning:

"Agreement" means this Agreement between AWR and Utility.

"Force Majeure" means those events set forth in Section 13 of this Agreement.

"Fully Distributed Costs" means costs determined in a manner that complies with the standards and procedures for the apportionment of special, joint, and common costs between the Utility and any non-regulated entity in accordance with applicable regulations of the Arizona Corporation Commission (ACC), except taxes as discussed in Section 5. A fully distributed costing methodology apportions the total costs of a group of services or products, including the authorized rate of return, among the individual services or products in that group.

Should the ACC assign different costs than Utility has assigned, such commission or board assigned costs, once such assignment is final and non-appealable, shall be the Fully Distributed Costs, until such time as the ACC assigns different costs, at which time such newly assigned costs shall be the Fully Distributed Costs. Whether to appeal a decision of the ACC shall be in Utility's sole discretion.

"Services" means all of the duties, obligations, and services as defined herein to be provided by Utility that are related to the performance and operation of AWR's Programs.

SECTION 2. Appointment of Utility.

AWR hereby engages and appoints Utility to provide certain customer support services for the Programs.

SECTION 3. Term; Termination.

3.1 Term. The term of this Agreement shall commence on January 1, 2005, and be for a period of one (1) year unless sooner terminated or extended as hereinafter provided.

3.2 Renewal. The Agreement will automatically renew itself for periods of one (1) year, each following one after the other, unless either party gives written notice of termination to the other party in accordance with Section 3.3.1.1.

3.3 Termination.

3.3.1 Termination Without Cause:

3.3.1.1 Procedure - After the initial one (1) year term, this Agreement may be terminated without cause or penalty by either party upon giving the other party sixty (60) days written notice in advance of the date upon which the termination becomes effective. This Agreement shall automatically terminate at such time as either party, or its successor is no longer an affiliate of American Water Works Company, Inc.

3.3.1.2 Transition Services Following Termination Without Cause -

Upon termination of the Agreement without cause, Utility shall continue to provide services to AWR, at AWR's request, for a period of not longer than sixty (60) days during AWR's transition to another service provider. Such transition services shall be provided under and subject to the same terms and provisions of this Agreement, including compensation.

3.3.2 Termination Upon Material Breach - Either party to the Agreement may terminate this Agreement upon material breach by the other party. The non-breaching party shall provide written notice of such breach to the other party, setting forth in detail the alleged failure



and/or deficiency, and, if such breach is not corrected within thirty (30) days from receipt of written notice by certified mail, this Agreement shall be terminated.

#### SECTION 4. Compensation.

4.1 Fee. The fee paid to Utility by AWR for Services rendered pursuant to this Agreement shall be equal to one hundred and fifteen (115%) percent of the Fully Distributed Costs incurred by Utility in providing the Services except for billing and collection services. The Fee for billing and collection services rendered by Utility as set forth in Paragraph 6.1.3 below shall be at a rate of \$.10 per customer per monthly billing period and apply in the aggregate to customers participating in one or more of AWR's Programs. The \$.10 rate may be adjusted from time to time as determined by the ACC to be consistent with any other such billing and collection service rates charged by Utility, under tariff, to others.

4.2 Allocation by Regulating Authority. Notwithstanding the fee schedule contained in Section 4.1, should the ACC disallow any cost of the Utility in excess of the Fully Distributed Costs as a result of the services provided to AWR pursuant hereto, AWR shall reimburse Utility for such disallowed costs, within thirty (30) days of receipt of notice of same and the fees due pursuant hereto shall be adjusted to reflect such allocation by the ACC.

#### 4.3 Reporting and Payments.

4.3.1 Utility shall maintain detailed records of all costs incurred in providing services to AWR. Utility will make such detailed records available for AWR's periodic review upon request by AWR, during normal business hours, at Utility's principal office.

4.3.2 Utility shall invoice AWR monthly or quarterly, at Utility's discretion, for the fee for services on or about the tenth business day of each billing period during the term of

this Agreement. The invoice shall detail the services provided and the costs incurred. AWR shall pay such fee to Utility within fifteen (15) days of the date of the invoice.

#### SECTION 5. Taxes.

Any tax or other amount which Utility may be required to pay to or collect for a government agency upon or with respect to the Services rendered hereunder, or the use or delivery of any products or parts thereof on behalf of AWR, except income taxes, will be billed to AWR as separately stated charges and will be paid by AWR in addition to the fees paid pursuant to Section 4. In the event AWR disputes the taxability of an item hereunder, Utility will continue to collect such tax unless and until AWR provides Utility with documentation authorized and prescribed by the taxing authority, such as a certificate of exemption, relieving Utility from liability for the collection and payment of such tax.

#### SECTION 6. Scope of Services.

6.1 Utility agrees that it shall provide the following customer support services for the Programs in accordance with the terms and provisions of this Agreement:

6.1.1 Distribution of Promotional Materials. Upon request of AWR, Utility shall manage and direct the distribution of informational and promotional materials regarding the Program to its customers. Such materials shall be developed by AWR and provided to Utility in sufficient quantities and in a timely manner so as not to impede any planned distribution efforts by Utility. The materials shall be distributed as a part of Utility's normal billing process, unless arrangements are made, at least sixty (60) days in advance, for a special mailing. The materials provided by AWR must be satisfactory in form and content to Utility, and nothing in this Agreement shall require Utility to distribute any materials that are not satisfactory to Utility. Utility shall make all reasonable efforts to promptly notify AWR when additional quantities of

promotional materials are needed. Utility shall have the sole discretion to determine the customers who will receive the informational and promotional materials for the Program.

6.1.2 Notification of Claim. Should a Utility associate, as a part of his/her normal duties, determine that a Utility customer has a covered occurrence with the Customer's water or sewer service line, the Utility associate shall notify AWR by calling a toll-free telephone number to be supplied by AWR. AWR shall then engage a qualified contractor to provide the covered services to the customer. AWR shall timely provide the necessary information to cause Utility's customer records to reflect when coverage is available.

6.1.3 Billing and Collection. AWR shall provide Utility with a list of enrolled customers in its Programs who have chosen to have charges from AWR included on their bill from Utility, and shall keep such list up to date. Utility shall include such charges on the customer's bill and collect such charges from the customer until such time as the customer or AWR notifies Utility that the customer is no longer receiving service from AWR or has elected a different payment option. Utility shall forward collected payments from enrolled customers to AWR within fifteen days following the end of each calendar month for amounts collected during such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.

6.1.4 Other Services. Utility shall perform such other and further services as are agreed to in a Service Order in the form attached hereto as **Exhibit 1** executed by the parties during the Term hereof.

SECTION 7. Provision of Information.

Except as provided herein, any specifications, diagrams, sketches, models, examples, tools, computer or other apparatus, programs, software, technical or business information, written, oral or otherwise (all thereafter collectively referred to as "Confidential Information"), furnished by one party (hereinafter referred to as the "Disclosing Party") to the other party (hereinafter referred to as the "Receiving Party") under this Agreement or in contemplation of this Agreement will remain the property of the Disclosing Party and will be held Confidential by the Receiving Party. All copies of such information will be returned to the Disclosing Party upon request. The Receiving Party, and any individual assigned by the Receiving Party will not permit the duplication, use or disclosure of the Confidential Information whether such disclosure be oral, written, in the form of computer tapes, drawings or other medium to any person other than the Receiving Party's employees, agents or representatives who must have such information to provide the Services, unless otherwise specifically authorized in writing by the Disclosing Party.

Confidential Information does not include any information which, at the time of disclosure, is generally known by the public, is rightfully obtained from third parties, is independently developed by the Receiving Party and any individual assigned by the Receiving Party outside the scope of its performance herein, or had been in the possession of the Receiving Party and any individual assigned by the Receiving Party prior to its commencement of the performance of its services.

The Receiving Party and any individual assigned by the Receiving Party agrees that: (1) this covenant not to disclose our use Confidential Information shall survive termination of this Agreement; and (2) it shall be liable for any and all breaches of such covenant by the Receiving Party, its employees, agents or representatives, whether such breach occurs during or after the term of this Agreement.

The Receiving Party shall take such steps as may be necessary in order to limit access to the Confidential Information on a need-to-know basis and assure compliance by the employees, agents and representatives to whom such information is given.

The provisions of this section shall survive termination of this Agreement.

It is understood that the Receiving Party may be required to furnish information to judicial, regulatory, or administrative bodies. In such an event, the Receiving Party will promptly notify the Disclosing Party of such requirement and will cooperate with the Disclosing Party should the Disclosing Party desire to seek a protective order to prevent the public disclosure of its information.

#### SECTION 8. Compliance with Laws.

Both parties agree to comply with the provisions of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal and state laws, rules, regulations and codes with which they are obligated to comply in the performance of this Agreement, including the procurement of permits and certificates where needed. Both parties further agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap, and to comply with all applicable federal and state laws, orders, rules and regulations on this subject during the performance of this Agreement.

This Agreement shall be subject to any and all applicable federal, state and local laws, regulations, and ordinances, as well as any applicable tariffs. To the extent necessary, the parties

agree to amend this Agreement to conform to the requirements of any such laws, regulations, ordinances, or tariffs.

AWR shall provide Utility with evidence reasonably requested by Utility to demonstrate compliance herewith.

SECTION 9. Insurance.

9.1 AWR shall, during the term of this Agreement, maintain the following insurance coverages with respect to the Programs, and shall include Utility as an Additional Insured:

9.1.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$2,000,000, combined single limit.

9.1.2 Comprehensive Automobile Liability with limit of \$2,000,000, combined single limit.

9.1.3 Excess Commercial General and Automobile Liability with limit of \$2,000,000, excess of \$2,000,000.

9.2 AWR shall cause each contractor it engages to perform services under the Programs (collectively "Repair Contractors"), during the term of this Agreement, to maintain the following insurance coverages with respect to the Programs, which coverages in subsections 9.2.1-9.2.3 shall include Utility as an Additional Insured:

9.2.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$1,000,000, combined single limit.

9.2.2 Comprehensive Automobile Liability with limit of \$1,000,000, combined single limit.

9.2.3 Excess Commercial General and Automobile Liability with limit of \$1,000,000, excess of \$1,000,000.

9.2.4 Workers Compensation coverage with Statutory Limits.

9.3 AWR shall, and shall cause its Repair Contractors to, furnish Utility with certificates of insurance evidencing coverage as required by this Paragraph.

#### SECTION 10. Obligations of AWR.

10.1 Development of Informational Materials. AWR shall be responsible for developing, producing, and printing all informational materials for the Programs.

10.2 Training. At its sole cost, AWR shall provide all necessary training and information to Utility personnel as is necessary to allow Utility to fully perform hereunder. Such training will be specific to educating Utility employees in the operation, terms, and conditions of the Programs. Utility shall make the necessary arrangements to provide a location for such training at or near Utility's facilities.

10.3 Contractors. AWR shall be responsible for engaging qualified independent contractors to perform the services included in the Programs. AWR shall contract with and maintain a sufficient number of contractors to perform promised services under the Programs, during the term of this Agreement. The cost of all services provided by such contractors shall be paid by AWR. Nothing in this Agreement shall be deemed to create any obligation on the part of Utility to undertake performance of any such services or pay for such services by the contractors engaged by AWR.

10.4 Administration. AWR shall be responsible for coordinating all administrative activities for the Programs and its customers including, but not limited to, enrollments, billings, accounting, marketing, financial analysis and reporting. AWR shall promptly notify Utility of customer enrollments in the Programs, including any changes in enrollment or billing status.

#### SECTION 11. Joint Obligations of the Parties.

11.1 AWR and Utility agree to cooperate to review existing planning, management and operations practices for the Programs.

## SECTION 12. Arbitration.

It is the stated intent and purpose of both parties at all times to reach agreement by negotiation between AWR and Utility, without recourse to arbitration. In the event, however, that such dispute or difference is not settled, either party may request that the matter be referred to arbitration. The demand for arbitration must be submitted to the American Arbitration Association within sixty (60) calendar days after the date of such request, in which case the arbitration shall cover and resolve any then existing controversy or claim between the parties hereto which directly or indirectly arises out of or relates to this Agreement. The arbitration shall be conducted in Voorhees, New Jersey in accordance with the rules and procedures then existing under the Commercial Arbitration Rules of the American Arbitration Association, provided that notwithstanding anything to the contrary contained in such Rules the following shall apply: The arbitration board shall consist of three arbitrators. AWR shall choose one arbitrator and Utility shall choose one arbitrator. If the two arbitrators appointed by the parties fail to agree within five (5) business days upon the selection of a third arbitrator, the third arbitrator shall be selected from a list of arbitrators supplied by the American Arbitration Association or otherwise in accordance with such Rules. After the appointments of the third arbitrator, the arbitration board shall meet as necessary for the purpose of reaching a determination in the dispute or difference, and the decision of the majority of the board, submitted in writing, to AWR and Utility shall be final and binding upon both parties. Judgment upon any decision rendered by such arbitration board may be entered in any court having jurisdiction. Each party shall bear the expense of its own arbitrators and witnesses, and the expenses of the third arbitrator and any general expenses of the arbitration shall be born equally by both parties.



SECTION 13. Force Majeure.

If, because of any act or occurrence beyond the reasonable control of either party, including, without limitation, acts of God, legislation or lawful regulations of any governmental body, court orders, fire, flood, explosion, strikes, labor disputes or shortage, wars or civil commotion, either party is reasonably prevented from performing any or all of its obligations hereunder, and if the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned Force Majeure, any time or date limitations shall be extended to the extent such party is so prevented.

SECTION 14. Assignments.

This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to an affiliate or successor of either party.

SECTION 15. Amendments.

This Agreement may be modified only by a written amendment signed by both parties.

SECTION 16. Notices.

All notices provided for in this Agreement shall be in writing and shall be deemed to have been given when hand delivered or deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, as follows:

If to AWR:

American Water Resources, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: William Eisenstadt, Vice President

If to Utility:

Arizona American Water Company  
19820 North 7th Street, Suite 201  
Phoenix, Arizona 85024  
Attention: Rob Kuta, Vice President

SECTION 17. Governing Law.

This Agreement, including the validity thereof and the rights and obligations of the parties thereunder, shall be construed in accordance with, and governed by the laws of the State of New Jersey.

SECTION 18. Indemnification.

18.1 AWR shall, and shall cause its Repair Contractors to, defend, indemnify and hold harmless Utility, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of AWR, its Repair Contractors, or their respective officers, employees, agents, contractors, and subcontractors in connection with the services rendered to Utility by AWR pursuant to the terms of this Agreement.

18.2 Utility shall defend, indemnify and hold harmless AWR, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of Utility, its officers, employees, agents, contractors, and subcontractors in connection with the services rendered to AWR by Utility pursuant to the terms of this Agreement.

SECTION 19. No Waiver.

The failure of a party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

SECTION 20. Severability.

In case one or more of the covenants, terms or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed and the remaining covenants, terms, and provisions shall remain in full force and effect.

SECTION 21. No Third-Party Beneficiaries.

No customer of the Programs, contractor of AWR, or any other third party shall be deemed a third-party beneficiary of this Agreement.

SECTION 22. Independent Contractor.

It is understood that the relationship of Utility to AWR is that of an independent contractor and not that of an employee and or agent of AWR. None of the employees or agents of Utility shall be considered employees of AWR. None of the employees or agents of AWR shall be considered employees of Utility. Each party shall be wholly responsible and liable for the employment taxes and withholdings due as a result of their performance hereunder.

SECTION 23. Complete Agreement.

This Agreement sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

SECTION 24. Titles and Headings.

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

SECTION 25. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 26. Condition Precedent.

This Agreement may be conditioned upon any necessary approval of the ACC.

SECTION 27. Limitation of Liability.

**NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, ATTRIBUTABLE TO OR RESULTING FROM ITS PERFORMANCE HEREUNDER.** In no event will Utility's liability for damages caused by its failure to supply material or perform services in a proper or timely manner exceed the amount paid by AWR to Utility for such materials or services.

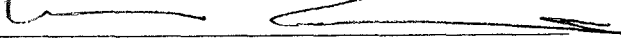
SECTION 28. Non-Exclusive

This Agreement is non-exclusive and Utility may enter into similar agreements with other

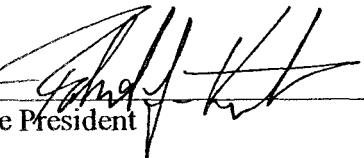
entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

AMERICAN WATER RESOURCES, INC.

By:   
Vice President

ARIZONA AMERICAN WATER COMPANY

By:   
Vice President

SERVICE ORDER

American Water Resources, Inc. (AWR) hereby engages Arizona American Water Company (Utility) to perform the following services, pursuant to the Agreement for Support Services executed between the parties on March 1, 2005:

Water and Sewer Line Protection Programs:

1. Distribution of Promotional Materials. See Section 6.1.1 for scope of services.
2. Repair Service Initiation. See Section 6.1.2 for scope of services.
3. Distribution of Customer Surveys. From time to time, AWR may develop customer surveys designed to measure customer satisfaction with the Programs, and if necessary, make Program enhancements. AWR shall submit such survey materials to Utility for review and comment prior to distribution to customers.
4. Billing and Collecting. Utility shall bill each of its customers who AWR identifies as having requested service and billing from Utility by a line item on the customer's water bill. AWR shall furnish reasonable evidence that a customer has requested the service to Utility upon Utility's request. Utility shall collect payments from the enrolled customers and forward same to AWR within fifteen days following the end of each calendar month for amounts collected during such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.

AMERICAN WATER RESOURCES, INC.

By: \_\_\_\_\_

Vice President

ARIZONA AMERICAN WATER COMPANY

By: \_\_\_\_\_

Vice President

## **EXHIBIT B**

Sample A. Sample  
1234 Anystreet  
Anytown, US 00000-0000

### Homeowner Information:

**Costs for repairing your water line could amount to thousands of dollars.**

As a homeowner, you own the water line that runs through your property between the street and your home. At any time, normal wear and tear can cause your water line to leak or break, as shown on the diagram below. You can't prevent it. You can't predict it. Worst of all, most homeowner insurance policies do not cover repairing it, so you'll have to pay for it.

**For just pennies a day, you can be protected from unexpected worries and costs.**

In cooperation with our affiliate, American Water Resources Inc., American Water is pleased to introduce a special Water Line Protection Program to cover these unexpected costs and provide you with peace-of-mind. This also means that you won't have to spend hours searching for a qualified repair contractor — you can leave that up to the experts.

### Customer Advantages:

----- Save up to \$4,000 -----  
*in unexpected water line repairs for just pennies a day (\$5 a month)*

----- Enjoy peace-of-mind -----  
*with protection from one of the most experienced water resource managers in the country*

----- Eliminate the hassles -----  
*of searching for a qualified repair contractor.*

----- Payment convenience -----  
*by adding directly to your monthly Arizona American water bill.*

**Enroll Today!**

WATER LINE PROTECTION PROGRAM  
1410 Discovery Parkway, Alton, IL 62002  
**TOLL FREE 1-866-430-0819**

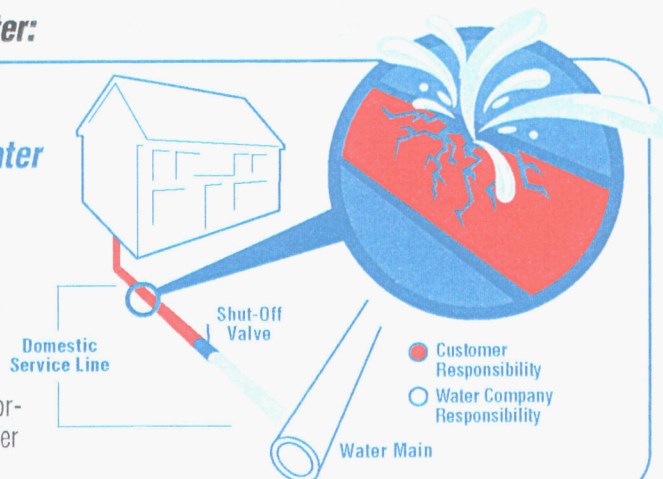
### Important Message From American Water:

#### Did You Know...

**It is your responsibility to repair the water line that runs through your property between the street and your home.**

Normal wear and tear can cause sudden, costly water leaks that are your responsibility to repair. It pays to be protected by the WATER LINE PROTECTION PROGRAM.

Please carefully read the Program terms and conditions on the back of this letter, and keep this information for future reference. Take advantage of this offer and return the Immediate Action Form today.



### Customer Service: TOLL FREE 1-866-430-0819

If you live in a dwelling such as a condo, duplex or townhome please contact your local homeowners association to determine if you are responsible for your water line.

AZUWL

## IMMEDIATE ACTION FORM

▲ DETACH HERE ▲

 **American Water Resources, Inc.**

**AZXXXXXC**

☐ **YES!** I want protection and peace of mind. Enroll me in the WATER LINE PROTECTION PROGRAM today.

Homeowner's Name:

#### SERVICE ADDRESS

Street:

City:

State:

Zip:

Reference Number:

#### MAILING ADDRESS (if different than service address)

Street:

City:

State:

Zip:

#### CONTACT INFORMATION

Home Phone (required): ( ) -

E-mail: Work/Cell Phone: ( ) -

#### PAYMENT OPTIONS:

☐ **ADD DIRECTLY TO MY ARIZONA AMERICAN WATER BILL.**

I authorize the amount of \$60.00 (plus applicable sales tax) to be added to my water bill in equal payments over the next 12 months.

By signing this enrollment form you agree to all terms and conditions of the WATER LINE PROTECTION PROGRAM as outlined on the back of the letter. Confirmation of enrollment will be sent to the above mailing address. Coverage begins 30 days after enrollment form is received and confirmed by American Water Resources, Inc. The expiration date for this introductory offer is 00/00/00. After 00/00/00 call 1-866-430-0819.

**X** Signature:

Date:



**AMERICAN WATER RESOURCES, INC.**

American Water Resources, Inc., a subsidiary of American Water, is dedicated to offering products and services that enhance those services currently offered by Your regulated water provider.

**WATER LINE PROTECTION PROGRAM**

This agreement is between American Water Resources, Inc. and You, a participant in the Water Line Protection Program, hereinafter referred to as the "Contract" or the "Program." Please read the Contract and retain it for Your records.

**THIS AGREEMENT COVERS**

American Water Resources, Inc.'s Water Line Protection Program will cover the cost for repair of Your Customer-Owned Water Line should You have a water leak caused by normal wear and tear.

**DEFINITIONS**

"Administrator" means American Water Resources, Inc., 1410 Discovery Parkway, Alton, Illinois 62002. Toll Free 1-866-430-0819.

"Confirmation Letter" means the acknowledgement letter You will receive from Us following enrollment outlining Your Program specifications. The Confirmation Letter will include the following information:

- Your Name
- Your Covered Address
- Your Customer Number
- Your Program Effective Date
- Your Program Term

"Customer-Owned Water Line" means the section of the single water supply line You own that runs from Your home to the connection owned by Arizona American Water. It does not include any connections/extensions such as water lines to sprinklers and/or irrigation meters You may own or any section of the water supply line owned by other outside of this Agreement to which Your Customer-Owned Water Line is attached.

• If the meter is located inside Your home, it is the section of the water supply line from Arizona American Water's street-side shut-off valve to the inlet side of the meter.

• If the meter is located outside Your home, it is the section of the water supply line from Arizona American Water's street-side shut-off valve to the shut-off valve inside Your home.

"Effective Date" means the date protection begins under the Program, which is thirty (30) days after Your Enrollment Date. Your Program Effective Date is listed on Your Confirmation Letter.

"Enrollment Date" means the date Your enrollment form is received, processed and confirmed by Us.

"Lapse of Coverage" means We requested payment from You for an additional Term or Your periodic Program fee was due and We did not receive Your full payment within thirty (30) days from the date said payment was due. The Program will lapse without notice.

"Program" means American Water Resources, Inc.'s Water Line Protection Program.

"Term" means the period of time, from the Program Effective Date, Your Program will be in effect. The Program Term is annual (12 months) unless it is terminated or cancelled sooner as provided herein. Your Program Term is listed on Your Confirmation Letter.

"We", "Us" and "Our" mean the Administrator.

"You" and "Your" means a residential customer and customer of record of Arizona American Water, the homeowner of a single-family resident and the purchaser of this Program.

**ELIGIBILITY FOR PROTECTION**

You must be a residential customer, customer of record of Arizona American Water and the owner of a single-family home to which the Customer-Owned Water Line is attached. The Customer-Owned Water Line must be free of leaks and in working order prior to Your Enrollment Date in the Program.

Homeowners of multi-unit dwellings such as condominiums, town homes or duplexes are eligible for the Program only if they have ownership and maintenance responsibility for the dwelling's single water supply line. The Program is not available to any tenant who rents or leases a single-family residential home.

**PERIOD OF PROTECTION**

Program Protection initiates thirty (30) days after Your Enrollment Date. Your protection will continue for the Term listed on Your Confirmation Letter. Your Program Term may be automatically extended provided You make timely payments to Us at the then-current annual Program fee. If You purchase additional Terms without a Lapse of Coverage, Your protection will remain valid as of the Program Effective Date listed on Your Confirmation Letter. If the Program lapses as outlined under "Lapse of Coverage," You may re-enroll in the Program at any time subject to a new Enrollment Date and Effective Date.

**LIMIT OF PROTECTION**

The maximum amount We will pay for any covered repair under the Program is \$4,000 per occurrence. Before the line is repaired, if a permit is required, We will obtain proper permitting before work will commence. We will provide basic site restoration to the repair area once the repair work is completed. Site restoration is limited to filling in, raking and reseeded, one time only. All repairs to Your Customer-Owned Water Line will comply with local water code requirements.

Any subsequent repair made within sixty (60) days of a prior covered repair will be considered as a part of that prior covered repair and limited to the \$4,000 per occurrence limit. If a permit was acquired to commence work on covered water lines and requires a sidewalk, located in a public easement, to be repaired, the Program will provide repair of said sidewalk up to \$500. Cost to repair sidewalks applies toward the Program \$4,000 maximum. You will not, unless at Your own expense, engage a contractor or otherwise incur costs to repair the Customer-Owned Water Line on Our behalf. You may neither transfer the Program to a new owner of the covered property nor transfer the Program to a different residence owned by You.

**THIS AGREEMENT DOES NOT COVER**

- Damage to Customer-Owned Water Line incurred or existing prior to the Program Enrollment Date.
- Damage to Customer-Owned Water Line caused by the actions or negligence of You or third parties.
- Damage to Customer-Owned Water Line caused by natural disasters, or acts of nature, including, but not limited to, earthquakes, floods, landslides or sinkholes or any other insurable cause.
- Any section of the water supply line owned by others outside of this Agreement to which Your Customer-Owned Water Line is attached.
- Any consequential, incidental or special damages You incur including lost water, regardless of whether they are caused by delays, failure to service or for conditions beyond the control of the Administrator.
- Restoration of trees, shrubs, paved surfaces, or structures, for any reason.
- Any damage to finished or unfinished walls or surfaces inside Your home necessary to access and repair Your Customer-Owned Water Line.
- Leak repairs to any interior pipes beyond the shut-off valve inside Your home.
- Restoration of sidewalks not located in public easement. Also, restoration of sidewalks located in public easements but not required on the permit.
- Removal of debris necessary to access and repair Your Customer-Owned Water Line, including, but not limited to, old cars, trash, storage, rocks or materials.
- Movement of the meter at the time of repair, unless required by local code.
- Any rental dwellings for which Program enrollment is in the name of the tenant or any dwellings used for commercial purposes. (Unit owners please refer to "Eligibility for Protection.")
- Updating non-leaking pipes to meet code, law or ordinance requirements or changes thereto.
- Movement of working pipes and/or lines.

**YOUR RESPONSIBILITIES**

If You suspect there is a water leak, call the toll-free number shown on your water bill from Arizona American Water who will investigate the source of the problem. In the event Arizona American Water determines that the leak is to Your Customer-Owned Water Line, We will arrange to have an approved, independent contractor call You to set up a time to come out to Your home. The contractor will contact You within 12 hours for emergency service, or by 5:00 pm the next business day for all other service, to arrange for repair of Your Customer-Owned Water Line.

If a permit was acquired that requires repair to sidewalks located in public easements, and the cost to repair exceeds the Program maximum of \$500, it is Your responsibility to pay any additional costs. If repair cost to the Customer-Owned Water Line exceeds the Program maximum of \$4,000, it is Your responsibility to pay any additional costs. Any costs in excess of the Program maximum will be stated to You before work is performed and We will send You an invoice for all expenses over any Program maximum. Beyond the previously outlined exceptions, You will not be charged any deductible

or service call fees in conjunction with a covered repair. It is Your responsibility to secure permission (right-of-way) associated with gaining access to repair Your Customer-Owned Water Line that may pass through property that You do not own.

**ADMINISTRATOR'S RIGHTS**

We reserve the right to change Your Program fee and/or the Program terms and conditions with thirty (30) days written notice to You. We reserve the right to transfer or assign Your Program contract. You grant Us the right to obtain customer of record information from Arizona American Water limited to Your name, address and any other pertinent information. This information will not be sold to any outside marketing companies.

**CANCELLATION**

You may cancel this Program at any time by mailing a cancellation request to American Water Resources, Inc., Attention: Water Line Protection Administrator, 1410 Discovery Parkway, Alton, Illinois 62002. If You cancel, the effective date of cancellation is the date We receive Your notice. You have thirty (30) days from Your Enrollment Date to cancel and receive a full refund of any payments made. Your Program participation will be subject to cancellation without notice once You are thirty (30) days past due on any payment for the Program. If Your Program protection has been cancelled due to non-payment, You may re-enroll in the Program with a new Enrollment Date and new Effective Date. We reserve the right to cancel the Program at any time upon ninety (90) days notice to You. Any refund as a result of the cancellation of the contract by either You or Us, will be determined on a prorated basis less the cost of any service performed under the Program. If You are owed a refund, it will be processed via the enrollment payment method You chose to join the Program.

**PAYMENT ARRANGEMENTS**

You authorize Us to arrange for payment to be added to Your Arizona American Water water bill. Your annual payment will be divided by the number of times per year that Arizona American currently bills You. Your Program participation will be subject to cancellation without notice once You are thirty (30) days past due on any payment for the Program. Your payments to Arizona American will first be applied to Your utility fees and lastly to Your Water Line Protection Program fees. Failure to make payments for the Program will not affect continuation of Your water utility service.

**TAXES**

American Water Resources, Inc. will collect any and all appropriate taxes if required by the local municipal government(s), county government or the Arizona. These taxes will be collected on each of your periodic water bills from Arizona American Water.

**LIMITATION OF LIABILITY**

In the event that Your property is not eligible for coverage under the terms and conditions of the Program, our only obligation is to refund any payments made by You to Us. Once we have paid You this refund, the Program will be voided as of Your Enrollment Date. The liability of the Administrator, its affiliated companies, its officers, employees, contractors and/or agents to You, or to any other third party or person, for damages resulting from the provision of, or failure to provide services under this Program, or as the result of any fault, failure, defect or in any service, labor, material, work or product furnished in connection with this Program shall be limited to an amount not to exceed \$4,000. In no event, however, shall the Administrator, its affiliated companies, its employees, agents and contractors have any liability for special, indirect, incidental, consequential or punitive damages resulting from the provision of or failure to provide service under this Program, or from any fault, failure, defect or deficiency in any service, labor, material, work or product furnished in connection with this Program. These limitations of and exclusions from liability shall apply regardless of the nature of the claim or the remedy sought.

**THE WATER LINE PROTECTION PROGRAM IS NOT AN INSURANCE CONTRACT OR POLICY. THE PROGRAM PROVIDES FOR THE REPAIR OF LEAKS TO YOUR CUSTOMER-OWNED WATER LINE DUE TO NORMAL WEAR AND TEAR. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN AMERICAN WATER RESOURCES, INC. AND YOU. AND THERE ARE NO OTHER PROMISES OR CONDITIONS IN ANY OTHER AGREEMENT WHETHER WRITTEN OR ORAL.**

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AZUWLTC

**American Water Resources, Inc.**  
**Water Line Protection Program**  
**1410 Discovery Parkway, Alton, IL 62002**  
**Toll Free 1-866-430-0819**

## **EXHIBIT C**



## American Water

1410 Discovery Parkway  
Alton, IL 62002

Sample A. Sample  
123 Any Street  
Apartment 000  
Anytown, US 12345-6789

## A Sewer Line Problem Can Be One Of The Costliest Repairs You Face As A Homeowner.

Dear Sample A. Sample:

You made a wise decision when you joined the Water Line Protection Program, offered by our affiliate, American Water Resources, and we're sure you're pleased with the peace of mind it provides. But you're only half protected. There's another line underneath your property that's up to 4 times more likely to cause you costly utility line repairs — your sewer line. That's why it's smart to add to your protection today with the **NEW Sewer Line Protection Program**.

**Excavation...line clearing...site restoration...sidewalk/street repaving...can all cost thousands of dollars.**

You own and are responsible for maintaining the sewer line running between your home's exterior and the street. It's highly vulnerable to clogs and blockages...from tree roots, pipe collapse and common waste, which can happen at any time — usually without advance notice.

Unfortunately, you can't fix the problem with liquid drain opener — it can take heavy machinery, skilled crews with special equipment and licensed plumbers to install new sections of pipe. That's an expensive procedure, and it comes straight out of your pocket. If you think your homeowners insurance will cover the cost, better think twice — most policies will not pay for it.

**Protect yourself from unexpected worries and costs for a low monthly fee.**

As a valued American Water Resources customer, you can enroll in the **NEW Sewer Line Protection Program** today and relax. It costs only a small amount — just \$9 a month for the opportunity to save thousands of dollars in unexpected blockage repairs. And you'll avoid the hassle of finding a qualified contractor. We promptly dispatch experienced repair technicians right to your door in less than 24 hours, for a modest service call fee\*.

When you consider the benefits, I'm certain you'll agree that this new program is another excellent opportunity available to you as an American Water Resources customer.

- Save up to \$8,000 in unexpected blockage repairs for only \$9 a month
- Enjoy peace of mind knowing your problem will be handled by experts within 24 hours of your call
- Be confident with protection from one of the country's most experienced water resource managers

Please carefully read the program terms and conditions on the back of this letter, and keep this information for future reference. Then simply return your Priority Enrollment Form in the enclosed envelope, and you'll be protected from the expense and anxiety of a clogged or blocked sewer line. And because your sewer line can clog at any time, it makes good sense to return your Form today.

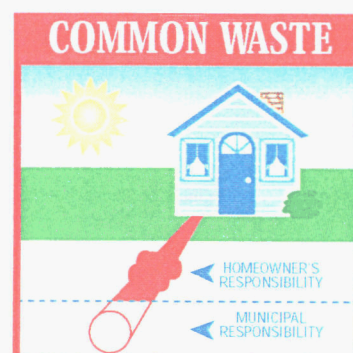
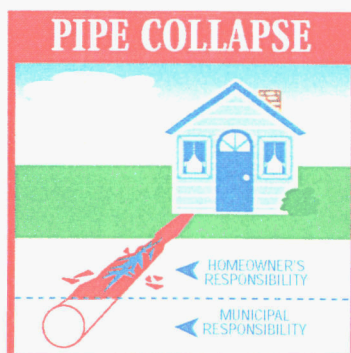
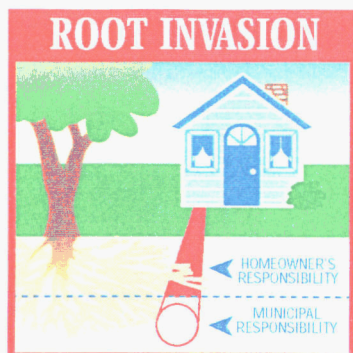
Sincerely,



\* \$50 service fee applies when a contractor is dispatched to your home.

P.S. Protect your sewer line today! Enroll now.

# Avoid Costly, Unexpected Blockage Repairs!



## Protect Yourself With The NEW Sewer Line Protection Program

CUSTOMER SERVICE CENTER  
SEWER LINE PROTECTION PROGRAM  
1410 Discovery Parkway, Alton, IL 62002  
Toll Free 1-866-430-0819

▼ DETACH HERE ▼

AZUSLF

### PRIORITY ENROLLMENT FORM:

 American Water Resources, Inc.

A Z S 9 0 5 4 E

☐ **YES!** I want to protect my sewer line. Please enroll me in the NEW Sewer Line Protection Program today!

#### PROTECTED HOME ADDRESS:

Home Owner's Name: Sample A. Sample

Reference Number: 12345-6789

Street Address: 1234 Anystreet

City: Anytown

State: USA

Zip: 00000-0000

#### MAILING ADDRESS: *If different than above address*

Street Address: 1234 Anystreet

City: Anytown

State: USA

Zip: 00000-0000

#### CONTACT INFORMATION:

Home Phone (Required): ( ) -

Work/Cell Phone: ( ) -

E-mail:

#### PAYMENT OPTION: *COST IS IN ADDITION TO ANY FEES FOR OTHER AMERICAN WATER RESOURCES PROGRAMS*

☐ **ADD DIRECTLY TO MY ARIZONA AMERICAN WATER BILL.**

I authorize the amount of \$108.00 (plus applicable sales tax) to be added to my water bill in equal payments over the next 12 months.

By signing this enrollment form you agree to all terms and conditions of the SEWER LINE PROTECTION PROGRAM as outlined on the back of the letter. Confirmation of enrollment will be sent to the above mailing address. Protected home coverage begins 30 days after enrollment form is received and confirmed by American Water Resources, Inc. The expiration date for this offer is XX/XX/XX. After XX/XX/XX please call 1-866-430-0819 for current offer.

 Signature

Date

# American Water Resources, Inc.

## AMERICAN WATER RESOURCES, INC.

American Water Resources, Inc., a subsidiary of American Water, is dedicated to offering products and services that enhance those services currently offered by your regulated water provider and your local Wastewater Service Provider.

## SEWER LINE PROTECTION PROGRAM

This agreement is between American Water Resources, Inc. and you, a participant in the Sewer Line Protection Program, hereinafter referred to as the "Contract" or the "Program." Please read the Contract and retain it for your records.

## THIS AGREEMENT COVERS

American Water Resources, Inc.'s Sewer Line Protection Program will cover the costs associated with our service to clear or repair a blockage of your Customer-Owned Sewer Line subject to the terms and conditions outlined below.

## DEFINITIONS

"Administrator" means American Water Resources, Inc., 1410 Discovery Parkway, Alton, Illinois 62002.  
Toll Free 1-866-430-0819.

"Confirmation Letter" means the acknowledgement letter you will receive from us following enrollment outlining your Program specifications. The Confirmation Letter will include the following information:

- Your Name
- Your Covered Address
- Your Customer Number
- Your Program Effective Date
- Your Program Term

"Customer-Owned Sewer Line" means the section of the lateral sewer service line you own that collects and conveys household wastewater from your home to the Wastewater Collection System. The Program covers the portion of your Customer-Owned Sewer Line that is the most direct line between the exterior foundation wall of your home and Wastewater Collection System. It does not include any connections or extensions such as lines to or from septic systems, leach fields or non-conforming drain lines and does not include any pumps or other mechanical devices that may be connected to your Customer-Owned Sewer Line. In addition, it does not include any section of the sewer service line owned by others outside of this Agreement to which your Customer-Owned Sewer Line is attached.

"Effective Date" means the date protection begins under the Program, which is 30 days after your Enrollment Date. Your Program Effective Date is listed on your Confirmation Letter.

"Enrollment Date" means the date your enrollment form is received, processed and confirmed by us.

"Lapse of Coverage" means We requested payment from you for an additional Term or your periodic Program fee was due and we did not receive your full payment within 30 days from the date said payment was due. The Program will lapse without notice.

"Program" means American Water Resources, Inc.'s Sewer Line Protection Program.

"Service Fee" means the \$50 fee you must pay each time we dispatch an authorized service provider to your home to investigate, clear or repair a blockage of your Customer-Owned Sewer Line. The Service Fee will be collected by our authorized service provider and is payable immediately upon completion of our service to investigate, clear or repair a blockage of your Customer-Owned Sewer Line.

"Term" means the period of time, from the Program Effective Date, your Program will be in effect. The Program Term is annual (12 months) unless it is terminated or cancelled sooner as provided in this Contract. Your Program Term is listed on your Confirmation Letter.

"Wastewater Collection System" means the sewage collection system owned by your local Wastewater Service Provider to which your Customer-Owned Sewer Line is connected.

"Wastewater Service Provider" means your local utility company or municipal sewer authority that owns and is responsible for maintaining the Wastewater Collection System that receives wastewater from your single-family home.

"We", "Us" and "Our" means the Administrator.

"You" and "Your" means the owner of a single-family residential home and the purchaser of this Program.

## ELIGIBILITY FOR PROTECTION

You must be a residential customer of Arizona American Water and the owner of a single-family home to which the Customer-Owned Sewer Line is attached. The Customer-Owned Sewer Line must be free of clogs and blockages and in working order prior to your Enrollment Date in the Program. Homeowners of multi-unit dwellings such as condominiums, town homes or duplexes are eligible for the Program only if they have ownership and maintenance responsibility for the dwelling's lateral sewer service line. The Program is not available to any tenant who rents or leases a single-family residential home. In the event that your property is not eligible for coverage under the terms and conditions of the Program, our only obligation is to refund any payments made by you to us. Once we have paid you this refund, the Program will be voided as of your Enrollment Date.

## PERIOD OF PROTECTION

Program Protection initiates 30 days after your Enrollment Date. Your protection will continue for the Term listed on your Confirmation Letter. Your Program Term may be automatically extended provided you make timely payments to us at the then-current annual Program fee. If you purchase an additional Term without a Lapse of Coverage, your covered period of protection will remain the Program Effective Date listed on your Confirmation Letter. If the Program lapses as outlined under "Lapse of Coverage," you may re-enroll in the Program at any time subject to a new Enrollment Date and Effective Date.

## HOW TO GET SERVICE AND YOUR RESPONSIBILITIES

If you suspect there is a blockage of your Customer-Owned Sewer Line, you must first contact your local Wastewater Service Provider to determine the source of the problem. In the event your local Wastewater Service Provider determines the blockage to be your responsibility, then you must contact us toll free 1-866-430-0819 to request our service. We will arrange to have an approved, independent contractor call you to make arrangements to come out to your home. Following that call, the independent contractor will be dispatched to your home within 24 hours to clear or repair a blockage of your Customer-Owned Sewer Line.

If the cost to clear or repair a blockage of your Customer-Owned Sewer Line exceeds the Program maximum of \$4,000, it is your responsibility to pay any additional costs. If a permit is required for a public Sidewalk or Road Opening repair and the cost to repair exceeds the additional limit of \$4,000, it is your responsibility to pay any additional costs. These limits on the protection that we provide under the Program are described in greater detail below under the heading "LIMIT OF PROTECTION." Any costs in excess of any Program limits will be stated to you before work is performed and we will send you an invoice for all expenses over any Program maximum. It is also your responsibility to pay the Service Fee to our authorized service provider immediately upon completion of our service to investigate, clear or repair a blockage of your Customer-Owned Sewer Line. It is your responsibility to secure permission (right-of-way) associated with our gaining access to clear or repair a blockage of your Customer-Owned Sewer Line that may pass through property that you do not own.

## LIMIT OF PROTECTION

The maximum amount we will pay for any covered Customer-Owned Sewer Line blockage service under the Program is \$4,000 per occurrence. Before a blockage is cleared or repaired, if a permit is required, we will obtain proper permitting before work will commence. We will provide basic site restoration to ground areas outside your home if it is necessary for us to undertake excavation work to access and clear or repair a blockage of your Customer-Owned Sewer Line. Basic site restoration is limited to filling in, raking and reseeding one time only. All blockage service of your Customer-Owned Sewer Line will comply with local applicable code requirements. Any subsequent service we provide to clear or repair a blockage of your Customer-Owned Sewer Line that occurs within 60 days of a prior covered blockage service, will be considered as part of that prior covered blockage service and limited to the \$4,000 per occurrence limit. If a permit is required to commence work on your Customer-Owned Sewer Line and requires a public sidewalk or public road to be cut, excavated, and repaired, known as a public "Sidewalk or Road Opening," the Program provides an additional limit of \$4,000 for a public Sidewalk or Road Opening. Only expenses directly related to a Sidewalk or Road Opening are paid under this separate limit. This additional limit, if applicable, does not add any additional coverage to the basic \$4,000 per occurrence limit to clear or repair a blockage of your Customer-Owned Sewer Line. You will not, unless at your own expense, engage a contractor or otherwise incur costs to clear or repair a blockage of your Customer-Owned Sewer Line on our behalf. You may neither transfer the Program to a new owner of the covered property nor transfer the Program to a different residence owned by you.

## LIMITED WARRANTY

SUBJECT TO THE TERMS AND CONDITIONS STATED IN THIS CONTRACT, WE WARRANT THAT WE WILL PAY THE COST TO CLEAR OR REPAIR A BLOCKAGE OF YOUR CUSTOMER-OWNED SEWER LINE COVERED UNDER THE PROGRAM WHICH BECOMES BLOCKED AS A RESULT OF NORMAL WEAR AND USAGE. THIS WARRANTY APPLIES ONLY TO COVERED SERVICES AND IS SUBJECT TO LIMITS ON THE AMOUNT WE WILL PAY AS DESCRIBED IN THIS CONTRACT. WE MAKE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF ANY KIND, AND ANY IMPLIED WARRANTIES OR GUARANTEES ARE EXPRESSLY DISCLAIMED.

## THIS AGREEMENT DOES NOT COVER

The Program does not cover the following:

- A Customer-Owned Sewer Line 1) not connected to a public or municipal sewer system; 2) with a connection to or from a septic system, tank or leach field; 3) with a connection to or from any non-conforming drain line such as a basement or storm drain system.
- A blocked Customer-Owned Sewer Line 1) incurred or existing prior to your Program Enrollment Date; 2) caused by the actions or negligence of you or third parties; 3) caused by natural disasters, or acts of nature, including, but not limited to, earthquakes, floods, landslides, sinkholes or any other insurable cause.
- Any section of the sewer service line owned by others outside of this Agreement to which your Customer-Owned Sewer Line is attached.
- Blocked lift stations, ejector pumps, grinder pumps or any other mechanical devices connected to Customer Owned Sewer Line.
- Any portion of Customer-Owned Sewer Line located inside or under your home.
- Any blockage service required as a result of any local, city or state agency inspection of your Customer-Owned Sewer Line.
- Any damage to the inside of your home due to the backup of your Customer-Owned Sewer Line.

• Restoration of trees, shrubs, structures, or sidewalks, drive ways, or other paved surfaces.

• Restoration of non-public sidewalks/roadways or public sidewalks/roadways that are not required by permit to be repaired.

• Removal of debris necessary to access and clear or repair a blockage of your Customer-Owned Sewer Line, including but not limited to temporary structures, old cars, trash, storage, rocks or materials.

• Any rental dwellings for which Program enrollment is in the name of the tenant or any dwellings used for commercial purposes. (Unit owners please refer to "Eligibility for Protection.")

• Updating non-blocked lines to meet code, law or ordinance requirements or changes thereto.

• Movement of working sewer lines for any reason.

• Any consequential, incidental or special damages you incur, regardless of whether they are caused by delays, failure to service or for conditions beyond the control of the Administrator. For example, the Program does not cover 1) the cost of cleaning up, repairing or replacing property (other than clearing or repairing a blockage of your Customer-Owned Sewer Line and basic site restoration as provided above) which is damaged due to the backup of your Customer-Owned Sewer Line; 2) costs and expenses incidental to the backup of your Customer Owned Sewer Line such as loss of time, loss of use of your home and other property, costs to stay at a hotel or to rent a home and costs to move and store property outside your home; and 3) damages you incur due to any special circumstances or conditions.

## ADMINISTRATOR'S RIGHTS

We reserve the right to change your Program fee and/or the Program terms and conditions with 30 days written notice to you. We reserve the right to transfer or assign your Program contract. You grant us the right to obtain customer of record information from Arizona American Water limited to your name, address and any other pertinent information. This information will not be sold to any outside marketing companies.

## CANCELLATION

You may cancel this Program at any time by mailing a cancellation request to American Water Resources, Inc., Attention: Sewer Line Protection Administrator, 1410 Discovery Parkway, Alton, Illinois 62002. If you cancel, the effective date of cancellation is the date we receive your notice. You have 30 days from your Enrollment Date to cancel and receive a full refund of any payments made. Your program participation will be subject to cancellation without notice once you are 30 days past due on any payment for the Program, including the Service Fee. If your Program protection has been cancelled due to non-payment, you may re-enroll in the Program with a new Enrollment Date and new Effective Date. We reserve the right to cancel the Program at any time upon 90 days notice to you. Any refund as a result of the cancellation of the contract by either you or us, will be determined on a prorated basis less the cost of any service performed under the Program. If you are owed a refund, it will be processed via the enrollment payment method you chose to join the Program.

## PAYMENT ARRANGEMENTS

You authorize us to arrange for payment to be added to your Arizona American Water water bill. Your annual payment will be divided by the number of times per year that Arizona American currently bills you. Your Program participation will be subject to cancellation without notice once you are thirty (30) days past due on any payment for the Program. Your payments to Arizona American will first be applied to your utility fees and lastly to your Sewer Line Protection Program fees. Failure to make payments for the Program will not affect continuation of your water utility service.

## TAXES

American Water Resources will collect any and all appropriate taxes if required by the local municipal government(s), county government or the State of Arizona. These taxes will be collected on each of your periodic water bills from Arizona American Water.

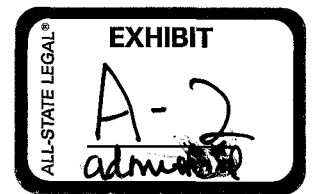
## LIMITATION OF LIABILITY

The liability of the Administrator, its affiliated companies, its officers, employees, contractors and/or agents to you, or to any other third party or person, for damages resulting from the provision of, or failure to provide services under this Program, or as the result of any fault, failure, defect or deficiency in any service, labor, material, work or product furnished in connection with this Program shall be limited to an amount not to exceed \$4,000 (or up to an additional \$4,000 limit that applies separately, if applicable, in the case of a public Sidewalk or Road Opening). In no event, however, shall the Administrator, its affiliated companies, its employees, agents and contractors have any liability for direct, indirect, special, incidental, consequential, (as described above) or punitive (damages to punish us for any wrongdoing) damages or attorney fees resulting from the provision of or failure to provide service under this Program, or from any fault, failure, defect or deficiency in any service, labor, material, work or product furnished in connection with this Program. These limitations of, and exclusions from, liability shall apply regardless of the nature of the claim or the remedy sought.

THE SEWER LINE PROTECTION PROGRAM IS NOT AN INSURANCE CONTRACT OR POLICY. THE PROGRAM PROVIDES A SERVICE TO CLEAR OR REPAIR A BLOCKAGE OF YOUR CUSTOMER-OWNED SEWER LINE WHICH BECOMES BLOCKED AS A RESULT OF NORMAL WEAR AND USAGE. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN AMERICAN WATER RESOURCES, INC. AND YOU, AND THERE ARE NO OTHER PROMISES OR CONDITIONS IN ANY OTHER AGREEMENT WHETHER WRITTEN OR ORAL.

**AMERICAN WATER RESOURCES, INC.**  
**SEWER LINE PROTECTION PROGRAM**  
**1410 DISCOVERY PARKWAY, ALTON, IL 62002**  
**TOLL FREE 1-866-430-0819**

AZ SLPP 108 TC 0705  
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**AGREEMENT FOR SUPPORT SERVICES**

**BETWEEN**

**AMERICAN WATER RESOURCES, INC.**

**AND**

**ARIZONA AMERICAN WATER COMPANY**

**September \_\_, 2005**

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**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

This Service Agreement, dated as of the \_\_\_ day of September, 2005 (the "Agreement"), is by and between the AMERICAN WATER RESOURCES, INC. (AWR), a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043, and ARIZONA AMERICAN WATER COMPANY (Utility), a corporation organized and existing under the laws of the State of Arizona, with its principal office located at 19820 North 7<sup>th</sup> Street, Suite 201, Phoenix, Arizona 85024.

WHEREAS, AWR provides certain services to utility customers, as more particularly described on Appendix A which is attached hereto and incorporated herein by reference, which list may be modified or amended from time to time by AWR (hereinafter the "Programs"); and

WHEREAS, Utility is the owner of a public water supply system; and

WHEREAS, many of Utility's residential customers may desire to and qualify to participate in one or more of AWR's Programs; and

WHEREAS, Utility desires to make certain or all of the Programs available to its customers upon the terms and conditions contained herein; and

WHEREAS, AWR desires to contract with Utility for certain customer support services for the Programs; and

WHEREAS, Utility possesses the necessary ability and experience to provide such customer support services and is willing to provide such services for the Programs upon the

terms and conditions contained herein; and

WHEREAS, it is the mutual desire of the parties to enter into this Agreement providing for the customer support for the Programs;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and subject to the terms and conditions herein stated, AWR and Utility agree as follows:

SECTION 1. Definitions.

The following words and phrases when used in this Agreement shall have the following meaning:

"Agreement" means this Agreement between AWR and Utility.

"Force Majeure" means those events set forth in Section 13 of this Agreement.

"Fully Distributed Costs" means direct costs, a contribution to common costs, and overhead in accordance with applicable regulations of the Arizona Corporation Commission (ACC), except taxes as discussed in Section 5.

Should the ACC assign different costs than Utility has assigned, once such assignment is final and non-appealable, these costs shall be the Fully Distributed Costs, until such time as the ACC assigns different costs, at which time such newly assigned costs shall be the Fully Distributed Costs. Whether to appeal a decision of the ACC shall be in Utility's sole discretion.

"Services" means all of the duties, obligations, and services as defined herein to be provided by Utility that are related to the performance and operation of AWR's Programs.

SECTION 2. Appointment of Utility.

AWR hereby engages and appoints Utility to provide certain customer support services for the Programs.

SECTION 3. Term; Termination.

3.1 Term. The term of this Agreement shall commence on September 1, 2005, and be for a period of one (1) year unless sooner terminated or extended as hereinafter provided.

3.2 Renewal. The Agreement will automatically renew itself for periods of one (1) year, each following one after the other, unless either party gives written notice of termination to the other party in accordance with Section 3.3.1.1.

3.3 Termination.

3.3.1 Termination Without Cause:

3.3.1.1 Procedure - After the initial one (1) year term, this Agreement may be terminated without cause or penalty by either party upon giving the other party sixty (60) days written notice in advance of the date upon which the termination becomes effective. This Agreement shall automatically terminate at such time as either party, or its successor is no longer an affiliate of American Water Works Company, Inc.

3.3.1.2 Transition Services Following Termination Without Cause -

Upon termination of the Agreement without cause, Utility shall continue to provide services to AWR, at AWR's request, for a period of not longer than sixty (60) days during AWR's transition to another service provider. Such transition services shall be provided under and subject to the same terms and provisions of this Agreement, including compensation.

3.3.2 Termination Upon Material Breach - Either party to the Agreement may terminate this Agreement upon material breach by the other party. The non-breaching party shall provide written notice of such breach to the other party, setting forth in detail the alleged failure and/or deficiency, and, if such breach is not corrected within thirty (30) days from receipt of written notice by certified mail, this Agreement shall be terminated.

#### SECTION 4. Compensation.

4.1 Fee. The fee paid to Utility by AWR for Services rendered pursuant to this Agreement shall be equal to one hundred and fifteen (115%) percent of the Fully Distributed Costs incurred by Utility in providing the Services except billing and collection services. The fee for billing and collection services rendered by Utility, as set forth in Paragraph 6.1.3 below, shall be at a rate of \$.10 per customer per monthly billing period and apply in the aggregate to customers participating in one or more of AWR's Programs. The \$.10 rate may be adjusted from time to time as determined by the ACC to be consistent with any other such billing and collection service rates charged by Utility, under tariff, to others.

4.2 Allocation by Regulating Authority. Notwithstanding the fee schedule contained in Section 4.1, should the ACC disallow any cost of the Utility in excess of the Fully Distributed Costs as a result of the services provided to AWR pursuant hereto, AWR shall reimburse Utility for such disallowed costs, within thirty (30) days of receipt of notice of same and the fees due pursuant hereto shall be adjusted to reflect such allocation by the ACC.

#### 4.3 Reporting and Payments.

4.3.1 Utility shall maintain detailed records of all costs incurred in providing services to AWR. Utility will make such detailed records available for AWR's periodic review upon request by AWR, during normal business hours, at Utility's principal office.

4.3.2 Utility shall invoice AWR monthly or quarterly, at Utility's discretion, for the fee for services on or about the tenth business day of each billing period during the term of this Agreement. The invoice shall detail the services provided and the costs incurred. AWR shall pay such fee to Utility within fifteen (15) days of the date of the invoice.

#### SECTION 5. Taxes.

Any tax or other amount which Utility may be required to pay to or collect for a

government agency upon or with respect to the Services rendered hereunder, or the use or delivery of any products or parts thereof on behalf of AWR, except income taxes, will be billed to AWR as separately stated charges and will be paid by AWR in addition to the fees paid pursuant to Section 4. In the event AWR disputes the taxability of an item hereunder, Utility will continue to collect such tax unless and until AWR provides Utility with documentation authorized and prescribed by the taxing authority, such as a certificate of exemption, relieving Utility from liability for the collection and payment of such tax.

#### SECTION 6. Scope of Services.

6.1 Utility agrees that it shall provide the following customer support services for the Programs in accordance with the terms and provisions of this Agreement:

6.1.1 Reserved.

6.1.2 Notification of Claim. Should a Utility associate, as a part of his/her normal duties, determine that a Utility customer has a covered occurrence with the Customer's water or sewer service line, the Utility associate shall notify AWR by calling a toll-free telephone number to be supplied by AWR. AWR shall then engage a qualified contractor to provide the covered services to the customer. AWR shall timely provide the necessary information to cause Utility's customer records to reflect when coverage is available.

6.1.3 Billing and Collection. AWR shall provide Utility with a list of enrolled customers in its Programs who have chosen to have charges from AWR included on their bill from Utility, and shall keep such list up to date. Utility shall include such charges on the customer's bill and collect such charges from the customer until such time as the customer or AWR notifies Utility that the customer is no longer receiving service from AWR or has elected a different payment option. Utility shall forward collected payments from enrolled customers to AWR within fifteen days following the end of each calendar month for amounts collected during

such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.

SECTION 7. Provision of Information.

Except as provided herein, any specifications, diagrams, sketches, models, examples, tools, computer or other apparatus, programs, software, technical or business information, written, oral or otherwise (all thereafter collectively referred to as "Confidential Information"), furnished by one party (hereinafter referred to as the "Disclosing Party") to the other party (hereinafter referred to as the "Receiving Party") under this Agreement or in contemplation of this Agreement will remain the property of the Disclosing Party and will be held Confidential by the Receiving Party. All copies of such information will be returned to the Disclosing Party upon request. The Receiving Party, and any individual assigned by the Receiving Party will not permit the duplication, use or disclosure of the Confidential Information whether such disclosure be oral, written, in the form of computer tapes, drawings or other medium to any person other than the Receiving Party's employees, agents or representatives who must have such information to provide the Services, unless otherwise specifically authorized in writing by the Disclosing Party.

Confidential Information does not include any information which, at the time of disclosure, is generally known by the public, is rightfully obtained from third parties, is independently developed by the Receiving Party and any individual assigned by the Receiving

Party outside the scope of its performance herein, or had been in the possession of the Receiving Party and any individual assigned by the Receiving Party prior to its commencement of the performance of its services.

The Receiving Party and any individual assigned by the Receiving Party agrees that: (1) this covenant not to disclose our use Confidential Information shall survive termination of this Agreement; and (2) it shall be liable for any and all breaches of such covenant by the Receiving Party, its employees, agents or representatives, whether such breach occurs during or after the term of this Agreement.

The Receiving Party shall take such steps as may be necessary in order to limit access to the Confidential Information on a need-to-know basis and assure compliance by the employees, agents and representatives to whom such information is given.

The provisions of this section shall survive termination of this Agreement.

It is understood that the Receiving Party may be required to furnish information to judicial, regulatory, or administrative bodies. In such an event, the Receiving Party will promptly notify the Disclosing Party of such requirement and will cooperate with the Disclosing Party should the Disclosing Party desire to seek a protective order to prevent the public disclosure of its information.

#### SECTION 8. Compliance with Laws.

Both parties agree to comply with the provisions of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal and state laws, rules, regulations and codes with which they are obligated to comply in the performance of this Agreement, including the procurement of permits and certificates where needed. Both parties further agree not to discriminate against any employee or applicant for employment because of race, color, religion,

sex, national origin, age or handicap, and to comply with all applicable federal and state laws, orders, rules and regulations on this subject during the performance of this Agreement.

This Agreement shall be subject to any and all applicable federal, state and local laws, regulations, and ordinances, as well as any applicable tariffs. To the extent necessary, the parties agree to amend this Agreement to conform to the requirements of any such laws, regulations, ordinances, or tariffs.

AWR shall provide Utility with evidence reasonably requested by Utility to demonstrate compliance herewith.

#### SECTION 9. Insurance.

9.1 AWR shall, during the term of this Agreement, maintain the following insurance coverages with respect to the Programs, and shall include Utility as an Additional Insured:

9.1.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$2,000,000, combined single limit.

9.1.2 Comprehensive Automobile Liability with limit of \$2,000,000, combined single limit.

9.1.3 Excess Commercial General and Automobile Liability with limit of \$2,000,000, excess of \$2,000,000.

9.2 AWR shall cause each contractor it engages to perform services under the Programs (collectively "Repair Contractors"), during the term of this Agreement, to maintain the following insurance coverages with respect to the Programs, which coverages in subsections 9.2.1-9.2.3 shall include Utility as an Additional Insured:

9.2.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$1,000,000, combined single limit.



9.2.2 Comprehensive Automobile Liability with limit of \$1,000,000, combined single limit.

9.2.3 Excess Commercial General and Automobile Liability with limit of \$1,000,000, excess of \$1,000,000.

9.2.4 Workers Compensation coverage with Statutory Limits.

9.3 AWR shall, and shall cause its Repair Contractors to, furnish Utility with certificates of insurance evidencing coverage as required by this Paragraph.

#### SECTION 10. Obligations of AWR.

10.1 Development of Informational Materials. AWR shall be responsible for developing, producing, and printing all informational materials for the Programs.

10.2 Training. At its sole cost, AWR shall provide all necessary training and information to Utility personnel as is necessary to allow Utility to fully perform hereunder. Such training will be specific to educating Utility employees in the operation, terms, and conditions of the Programs. Utility shall make the necessary arrangements to provide a location for such training at or near Utility's facilities.

10.3 Contractors. AWR shall be responsible for engaging qualified independent contractors to perform the services included in the Programs. AWR shall contract with and maintain a sufficient number of contractors to perform promised services under the Programs, during the term of this Agreement. The cost of all services provided by such contractors shall be paid by AWR. Nothing in this Agreement shall be deemed to create any obligation on the part of Utility to undertake performance of any such services or pay for such services by the contractors engaged by AWR.

10.4 Administration. AWR shall be responsible for coordinating all administrative activities for the Programs and its customers including, but not limited to, enrollments, billings,

accounting, marketing, financial analysis and reporting. AWR shall promptly notify Utility of customer enrollments in the Programs, including any changes in enrollment or billing status.

SECTION 11. Joint Obligations of the Parties.

- 11.1 AWR and Utility agree to cooperate to review existing planning, management and operations practices for the Programs.
- 11.2 Utility will not provide any customer-related information to AWR, except for information concerning a customer who has advised Utility that he or she has enrolled in one of the Programs and that is reasonably related to AWR's administration of the Program, including billing and collection of Program fees. This information will not include customer consumption data or information concerning the customer's payment history for utility services.

SECTION 12. Arbitration.

It is the stated intent and purpose of both parties at all times to reach agreement by negotiation between AWR and Utility, without recourse to arbitration. In the event, however, that such dispute or difference is not settled, either party may request that the matter be referred to arbitration. The demand for arbitration must be submitted to the American Arbitration Association within sixty (60) calendar days after the date of such request, in which case the arbitration shall cover and resolve any then existing controversy or claim between the parties hereto which directly or indirectly arises out of or relates to this Agreement. The arbitration shall be conducted in Voorhees, New Jersey in accordance with the rules and procedures then existing under the Commercial Arbitration Rules of the American Arbitration Association, provided that notwithstanding anything to the contrary contained in such Rules the following shall apply: The arbitration board shall consist of three arbitrators. AWR shall choose one

arbitrator and Utility shall choose one arbitrator. If the two arbitrators appointed by the parties fail to agree within five (5) business days upon the selection of a third arbitrator, the third arbitrator shall be selected from a list of arbitrators supplied by the American Arbitration Association or otherwise in accordance with such Rules. After the appointments of the third arbitrator, the arbitration board shall meet as necessary for the purpose of reaching a determination in the dispute or difference, and the decision of the majority of the board, submitted in writing, to AWR and Utility shall be final and binding upon both parties. Judgment upon any decision rendered by such arbitration board may be entered in any court having jurisdiction. Each party shall bear the expense of its own arbitrators and witnesses, and the expenses of the third arbitrator and any general expenses of the arbitration shall be born equally by both parties.

#### SECTION 13. Force Majeure.

If, because of any act or occurrence beyond the reasonable control of either party, including, without limitation, acts of God, legislation or lawful regulations of any governmental body, court orders, fire, flood, explosion, strikes, labor disputes or shortage, wars or civil commotion, either party is reasonably prevented from performing any or all of its obligations hereunder, and if the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned Force Majeure, any time or date limitations shall be extended to the extent such party is so prevented.

#### SECTION 14. Assignments.

This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to an affiliate or successor of either party.

#### SECTION 15. Amendments.

This Agreement may be modified only by a written amendment signed by both parties.

SECTION 16. Notices.

All notices provided for in this Agreement shall be in writing and shall be deemed to have been given when hand delivered or deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, as follows:

If to AWR:

American Water Resources, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: Graham Wood, President

If to Utility:

Arizona American Water Company  
19820 North 7th Street, Suite 201  
Phoenix, Arizona 85024  
Attention: Rob Kuta, Vice President

SECTION 17. Governing Law.

This Agreement, including the validity thereof and the rights and obligations of the parties thereunder, shall be construed in accordance with, and governed by the laws of the State of New Jersey.

SECTION 18. Indemnification.

18.1 AWR shall, and shall cause its Repair Contractors to, defend, indemnify and hold harmless Utility, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of AWR, its Repair Contractors, or their respective officers, employees, agents, contractors, and subcontractors in connection with the services rendered to Utility by AWR pursuant to the terms of this Agreement.

18.2 Utility shall defend, indemnify and hold harmless AWR, its officers, directors, employees and agents from and against any and all liability, including liability to third parties,

for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of Utility, its officers, employees, agents, contractors, and subcontractors in connection with the services rendered to AWR by Utility pursuant to the terms of this Agreement.

SECTION 19. No Waiver.

The failure of a party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

SECTION 20. Severability.

In case one or more of the covenants, terms or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed and the remaining covenants, terms, and provisions shall remain in full force and effect.

SECTION 21. No Third-Party Beneficiaries.

No customer of the Programs, contractor of AWR, or any other third party shall be deemed a third-party beneficiary of this Agreement.

SECTION 22. Independent Contractor.

It is understood that the relationship of Utility to AWR is that of an independent contractor and not that of an employee and or agent of AWR. None of the employees or agents of Utility shall be considered employees of AWR. None of the employees or agents of AWR shall be considered employees of Utility. Each party shall be wholly responsible and liable for the employment taxes and withholdings due as a result of their performance hereunder.

SECTION 23. Complete Agreement.

This Agreement sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

SECTION 24. Titles and Headings.

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

SECTION 25. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 26. Condition Precedent.

This Agreement may be conditioned upon any necessary approval of the ACC.

SECTION 27. Limitation of Liability.

**NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL,  
CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING OUT  
OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT**

**LIABILITY OR OTHERWISE, ATTRIBUTABLE TO OR RESULTING FROM ITS PERFORMANCE HEREUNDER.** In no event will Utility's liability for damages caused by its failure to supply material or perform services in a proper or timely manner exceed the amount paid by AWR to Utility for such materials or services.

SECTION 28. Non-Exclusive

This Agreement is non-exclusive and Utility may enter into similar agreements with other entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

AMERICAN WATER RESOURCES, INC.

By: \_\_\_\_\_  
President

ARIZONA AMERICAN WATER COMPANY

By: \_\_\_\_\_  
Vice President

## APPENDIX A

### Water Line Protection Program:

For a periodic fee, Utility customers may enroll in the Water Line Protection Program that, subject to its terms and conditions, provides a service to repair customer-owned water lines that leak or break due to normal wear and tear.

### Sewer Line Protection Program:

For a periodic fee, Utility customers may enroll in the Sewer Line Protection Program that, subject to its terms and conditions, provides a service to clear or repair blocked customer-owned sewer lines that become clogged or blocked due to normal wear and usage.



**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

| **MarchSeptember\_, 2005**

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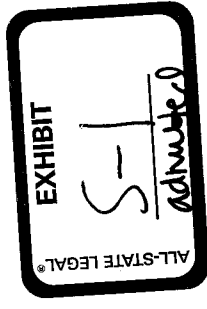
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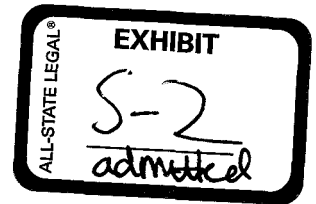
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**AMERICAN WATER RESOURCES, INC.**  
**Service Line Programs**

**Utility Regulatory Summary**

<u>State</u>	<u>Program Active</u>	<u>Program Launch Date</u>	<u>Utility Commission Filing / Approval</u>	<u>Comments</u>
PA	Yes	Sep-00	Yes / Yes	
NJ	Yes	Oct-01	No	No prior approval required - informal discussion between utility and commission
NY	Yes	Nov-02	No	No prior approval required - informal discussion between utility and commission
IN	Yes	Jan-03	Yes	Affiliate agreement filed - no prior approval required
MO	Yes	Apr-03	No	No prior approval required
OH	Yes	Jun-03	No	No prior approval required
IA	Yes	Nov-03	No	No prior approval required
IL	Yes	Dec-03	Yes / No	The 8/02 filing was cited as lacking sufficient evidence of Program need. The 12/03 Program launch was done without utility involvement
KY	Yes	Jul-04	No	No prior approval required
TN	Yes	Jul-04	No	No prior approval required
WVa	No	Jan-05	Yes	Filing withdrawn
VA	No	To Be Determined	Yes / Yes	VA Dept of Insurance approval required - in progress





STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company :  
: :  
Petition for consent to and approval of : 02-0517  
an Agreement with American Water :  
Resources, Inc. "an Affiliated Interest" :  
under Section 7-101 of the Illinois Public :  
Utilities Act, as amended. :

ORDER ON REOPENING

By the Commission:

**I. PROCEDURAL BACKGROUND**

On August 9, 2002, Illinois-American Water Company ("IAWC") filed with the Illinois Commerce Commission ("Commission") a petition requesting the Commission's approval to enter into an affiliated interest agreement with American Water Resources, Inc. ("AWR"), pursuant to Section 7-101 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq. The petition indicates that IAWC and AWR are subsidiaries of American Water Works Company, Inc. ("AWW"). On October 15, 2002, IAWC filed an amended petition reflecting an amended agreement with AWR. The amended affiliate agreement is attached to the amended petition.

Pursuant to due notice, a hearing was held in this matter on December 3, 2002 before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by counsel on behalf of IAWC and Commission Staff ("Staff"). Frederick L. Ruckman, Vice-President, Treasurer and Comptroller of IAWC, testified on behalf of IAWC. Mary H. Everson, an Accountant in the Accounting Department of the Commission's Financial Analysis Division, testified for Staff. Ms. Everson recommended changes to IAWC's accounting journal entries and a few modifications to the letter introducing the first service to be provided by AWR through the amended affiliate agreement. IAWC accepted Ms. Everson's recommendations at the December 3 hearing. At the conclusion of the hearing, the record was marked "Heard and Taken." The Commission considered the issue at its December 17, 2002 Regular Open Meeting and December 30, 2002 Special Open Meeting. At the latter meeting the Commission reopened the record on its own motion for the purpose of soliciting additional information.

Thereafter, the People of the State of Illinois, ex rel the Attorney General of the State of Illinois ("AG") and the Citizens Utility Board ("CUB") petitioned to intervene. Both petitions were granted. David Kolata, a Senior Policy Analyst at CUB, testified on behalf of CUB. David A. Borden, an Economic Analyst IV in the Policy Program within the Commission's Energy Division, submitted testimony for Staff. Frederick Ruckman submitted additional testimony for IAWC as well. An evidentiary hearing was held on

April 21, 2003, after which the record was marked "Heard and Taken" again. IAWC and Staff each filed an Initial Brief on Reopening and a Reply Brief on Reopening. CUB and the AG submitted a joint Initial Brief on Reopening and a Reply Brief on Reopening. A Proposed Order on Reopening was served on the parties. Following its review of the Proposed Order on Reopening, IAWC moved to withdraw its amended petition. IAWC, Staff, and the AG each filed a Brief on Exceptions and Brief in Reply to Exceptions<sup>1</sup>. The Briefs on Exceptions and Briefs in Reply to Exceptions were considered in the preparation of this Order on Reopening.

#### **A. IAWC's Motion to Withdraw**

As a general matter, there is no rule, regulation, or statute that grants IAWC the absolute right to withdraw its amended petition or voluntarily dismiss this docket at any time prior to a Commission ruling on its amended petition. It is within the Commission's discretion to allow a party to voluntarily dismiss or withdraw a petition. (See, Gibrick v. Skolnik, 254 Ill. App. 3d 970, 627 N.E.2d 76 (1<sup>st</sup> Dist. 1993)) Moreover, a trial court should not be free to grant a dismissal where its sole purpose would be to avert an unfavorable decision. (Gibrick, 254 Ill. App. 3d at 975, 627 N.E.2d at 79)

In the instant case, the Commission notes that the Administrative Law Judge's Proposed Order ("ALJPO") was served on the parties on July 23, 2003. On August 5, 2003 IAWC filed its Motion to Withdraw. A close reading of the subject motion discloses that the sole basis for withdrawal of its petition is based upon the ALJPO's denial of IAWC's request for approval of an affiliated interest agreement. (IAWC's Motion to Withdraw Verified Amended Petition, Count 5, filed August 5, 2003). Clearly, under the standards set forth by the court in Gibrick, voluntary dismissal, subsequent to hearing, should not be permitted where its sole purpose is to avoid an unfavorable judgment. (emphasis added). Therefore, under this standard the Commission finds that IAWC's Motion to Withdraw is impermissible and should be denied.

Additionally, the Commission observes that this matter has been fully litigated over a 13-month period of time. The Commission is mindful that the ALJ, Staff, CUB, and the AG, collectively, have spent valuable time and resources analyzing the issues, proffering testimony and conducting full evidentiary hearings regarding the issues presented pursuant to IAWC's filing of the instant petition. A complete record has been established upon which the Commission can deliberate and make its decision. For the aforementioned reasons, the Commission denies IAWC's Motion to Withdraw.

#### **II. BACKGROUND**

According to the amended petition, IAWC is a corporation organized under the laws of the State of Illinois with its principal office in Belleville, Illinois. The amended petition states that IAWC is engaged in the business of furnishing potable water service and sanitary sewer service to the public in portions of Alexander, Champaign, Cook, Douglas, DuPage, Grundy, Jersey, Kane, Kendall, LaSalle, Livingston, Logan, Madison,

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<sup>1</sup> Staff's Brief on Exceptions merely sought to clarify a footnote in the Proposed Order on Reopening. The AG's Brief on Exceptions voiced support for the Proposed Order on Reopening.

McHenry, Monroe, Peoria, St. Clair, Tazewell, Whiteside, and Will Counties, as it is duly authorized to do, and is a public utility within the meaning of Section 3-105 of the Act. IAWC is the result of the prior mergers of Alton Water Company, Cairo Water Company, East St. Louis and Interurban Water Company, Pekin Water Works Company, Peoria Water Company, and Northern Illinois Water Corporation and acquisition of the assets of United Water Illinois and Citizens Utilities Company of Illinois.

The amended petition also indicates that AWR is a corporation organized under the laws of the Commonwealth of Virginia. AWR was formed to provide certain services to utility customers. AWR is authorized to do business in Illinois and to provide service contracts under the Service Contract Act, 215 ILCS 152/1 et seq. Because both IAWC and AWR are wholly owned by AWW, AWR is an affiliated interest of IAWC, as defined in Section 7-101 of the Act.

IAWC witness Ruckman testifies that the amended affiliate agreement contemplates that IAWC will provide certain limited services to AWR in conjunction with AWR's offering of services to IAWC customers. He states that AWR currently anticipates offering a water line protection program ("WLPP") which would pay up to \$3,000 per occurrence for the repair of leaks, resulting from normal wear and tear only, in the customer-owned portion of the water line. Mr. Ruckman indicates that the WLPP would be a voluntary program and considered a "service contract" which provides a service to the customer in exchange for advance payments of fees.

The additional information requested by the Commission when it reopened the record pertains to the WLPP. The Commission sought answers in response to the following three questions:

- (1) What consumer groups and what parties in the affected trades, if any, were contacted regarding the WLPP?
- (2) Did (do) those parties have an opinion on IAWC's proposal?<sup>2</sup>
- (3) How does the WLPP compare and contrast with Commission approved programs in other industries (e.g. the linebacker program in telecommunications industry and in consideration of the joint marketing provisions of the affiliate rules for electric and gas companies)?

The additional review lead to Staff reevaluating its position and recommending that the amended petition be denied. CUB and the AG support the amended affiliate agreement if certain changes are made. IAWC accepts some of the recommendations from CUB and the AG, but otherwise objects to the positions of Staff, CUB, and the AG.

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<sup>2</sup> The Illinois Association of Plumbing, Heating, and Cooling Contractors and the Home Builders Association of Illinois received notice of the hearings held pursuant to the Commission's reopening of this matter. The associations did not intervene in this matter, did not enter an appearance, and were not present at any of the hearings.

### III. GOVERNING LAW

Section 7-101 of the Act establishes the Commission's authority over affiliate relationships. The relevant portions of this section read as:

(2)(ii) For the purpose of this Section, the phrase "affiliated interests" means:

\* \* \*

(c) Every corporation, 10% or more of whose voting capital stock is owned by any person or corporation owning 10% or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of 10% or more of voting capital stock;

\* \* \*

(3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission or is exempted in accordance with the provisions of this Section or of Section 16-111 of this Act. The Commission may condition such approval in such manner as it may deem necessary to safeguard the public interest. If it be found by the Commission, after investigation and a hearing, that any such contract or arrangement is not in the public interest, the Commission may disapprove such contract or arrangement. Every contract or arrangement not consented to or excepted by the Commission as provided for in this Section is void.

The consent to, or exemption or waiver of consent to, any contract or arrangement under this Section or Section 16-111, does not constitute approval of payments thereunder for the purpose of computing expense of operation in any rate proceeding. However, the Commission shall not require a public utility to make purchases at prices exceeding the prices offered by an affiliated interest, and the Commission shall not be required to disapprove or disallow, solely on the ground that such payments yield the affiliated interest a return or rate of return in excess of that allowed the public utility, any portion of payments for purchases from an affiliated interest.

### IV. AMENDED AFFILIATE AGREEMENT

Although much of the discussion in this docket focuses on the WLPP, the relief sought by the amended petition is the approval of the amended affiliate agreement regardless of the services provided pursuant to it. Staff, CUB, and the AG argue that



such an open ended affiliate agreement should not be approved since it is possible that some of the presently unannounced or unknown services to be provided under the agreement may not be in the public interest. IAWC insists that the agreement is in the public interest.

**A. IAWC's Position**

IAWC maintains that the interaction between it and AWR authorized by the amended affiliate agreement is in the public interest since all of IAWC's costs would be reimbursed by AWR and because ratepayers will receive a benefit which they would not otherwise receive through the partial sharing of profits received by IAWC. Specifically, the amended affiliate agreement contemplates that IAWC will be paid 15% on top of its fully distributed cost for providing services to AWR. IAWC proposes to treat the 15% over fully distributed costs as being 50% attributed to ratepayers and 50% attributed to shareholders. IAWC states that this method of accounting for non-regulated revenues was approved by the Commission in IAWC's last completed rate case, Docket No. 95-0076, with regard to sales of sewer usage data to municipalities.

The issue before the Commission, according to IAWC, is improper subsidization of non-utility services by the utility's ratepayers. IAWC maintains that concern over unknown future services under the amended affiliate agreement or specifics about the WLPP are not the proper focus of this proceeding. IAWC argues that any concerns of unjustified subsidization are unfounded. Unjustified subsidization, IAWC asserts, occurs when ratepayers are required to bear the risks or cost of services and resources related to non-utility activities. IAWC relies on Olympia Equipment Leasing Company vs. Western Union Telegraph Company, 797 F.2d 370 (7<sup>th</sup> Cir. 1986), cert denied 107 S. Ct. 1574 (1987); Catlin vs. Washington Energy Company, 791 F.2d 1343 (9<sup>th</sup> Cir. 1986); and Grason Electric Company vs. Sacramento Municipal Utility District, 571 F. Supp. 1504 (E.D. Cal. 1983) to support this statement. IAWC contends that these cases further show that the fact that a business is subject to regulation is not a reason to deny it the benefit of its size integration and other competitive advantages. IAWC states that Staff witness Everson's recommendation regarding proposed accounting and cost allocation procedures, recommendations which IAWC accepts, will insure that AWR bears its share of the fully allocated costs associated with any personnel or assets of IAWC which AWR may utilize. IAWC insists that these cost allocation and accounting procedures, which will remain subject to review by the Commission, protect its ratepayers from incurring costs resulting from AWR's activities. IAWC argues that since its brand name and reputation cost nothing to ratepayers, it is improper and unlawful for the Commission to require affiliates of IAWC to compensate ratepayers for such benefits as a condition for approval of affiliate agreements. Accordingly, IAWC believes that the amended affiliate agreement is in the public interest.

With regard to the sharing of profits 50-50 with ratepayers, IAWC states doing so has been approved for similar services in prior dockets. As shown by Mr. Borden's own testimony, IAWC points out that the similar programs which have been approved by the Commission for other industries do not offer as much benefit to customers as the WLPP. Mr. Borden reviewed programs of three other utilities which offer services similar to the WLPP.

Mr. Borden acknowledges that SBC's Linebacker Program is an unregulated, non-utility service which does not result in a sharing of profits from the program with ratepayers. Similarly, IAWC observes that under Verizon's Wiring and Jack Repair Service Program, ratepayers do not share the economic benefits as they would under the amended affiliate agreement at issue in this docket. With regard to the customer-owned piping and repair service program offered by NICOR, IAWC indicates that a NICOR customer who pays only a portion of their total bill has the payment allocated first to the affiliated service and second to the cost of NICOR's utility service.<sup>3</sup> IAWC contends that NICOR's current payment allocation method would put the customer at risk of having utility service shut off for inability to pay for both the utility service and the gas line protection program. Under IAWC's arrangement, if a customer pays only a portion of the bill and that customer has elected to have the AWR service fees included on their water bill, the funds would be allocated first to payment for utility service and second to the payment of AWR. IAWC adds that NICOR receives its fully allocated costs and provides no economic benefit to ratepayers from the provision of this service. Under IAWC's program, IAWC would receive its fully allocated costs, but would also share profits with the customers.

In addition to the rate benefit of its proposal, IAWC states that the proposed introductory letter is more in the public interest. IAWC notes that NICOR's affiliate is permitted to pay for the use of a monthly bill insert to send to customers. If the concern regarding customer confusion or parent endorsement is not against the public interest in the NICOR program where the affiliate uses multiple inserts in the utility bills, IAWC argues that the separate introductory letter that it proposes could not be against the public interest. Furthermore, IAWC maintains that the Commission has no control over NICOR's bill inserts, while it does have control over IAWC's proposed introductory letter through this proceeding.

IAWC also objects to Mr. Borden's recommendation that the amended affiliate agreement be rejected because it does not identify the services that will be provided under Section 6.1.4 of the agreement. Staff argues that the amended affiliate agreement is not specific enough and that the Commission should take a fresh approach to its review and approval of general service agreements. IAWC objects to any change in the Commission's approach and insists that the Commission must limit its review to the interaction that the amended affiliate agreement allows between IAWC and AWR. Any future interaction between the two, IAWC asserts, will be subject to the same terms that the Commission approves in this docket. IAWC states that any modifications to the agreement, or a different agreement, would require Commission approval. IAWC contends that the cost allocation and accounting procedures which are subject to the Commission's approval in this docket will remain subject to review by the Commission and protect IAWC's rate payers from incurring costs resulting from AWR's activities for any interaction which occurs as the result of the amended affiliate agreement. IAWC characterizes as speculative Staff's concern that conditions in the

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<sup>3</sup> Staff notes that NICOR's method of allocating a customer's payment is supposed to change soon so that any partial payment is first allocated to the cost of utility services and any remaining amount is allocated to the cost of the affiliate service.

industry may change over time such that what was in the public interest now may not be in the future. IAWC argues that such speculation by Staff is not a basis for denying IAWC its due process rights.

If the Commission were to change its approach to the approval of general service agreements for all utilities, IAWC claims that doing so in this docket would be inconsistent with administrative law. Any changes to the Commission's rules and policies, IAWC argues, must be made through a proper rulemaking proceeding. IAWC points out that the statutory rulemaking procedures are designed to protect the due process rights of potentially affected entities, as required by the U.S. Constitution and the Illinois Constitution. IAWC states further that an administrative agency may only deviate from its established precedent if it provides a reasoned explanation for doing so. Judicial precedent, IAWC adds, firmly establishes that an administrative agency may not depart from prior precedent, nor treat similarly situated applicants in an inconsistent manner, without explicitly recognizing that it is doing so and providing a reasoned explanation for its departure.

As for the joint provisions adopted by the Commission in connection with affiliate agreements for electric and gas utilities, (see 83 Ill. Adm. Code 450.25(a) and 83 Ill. Adm. Code 550.30(a)), IAWC points out that Mr. Borden recognizes that a joint marketing of a service similar to the WLPP by an alternative retail electric supplier ("ARES") or by an alternative retail gas supplier ("ARGS") would not be prohibited unless the affiliate were in competition with an ARES or an ARGS. Since there are no alternative water suppliers, IAWC states that these rules would not apply. Water suppliers, however, should not, IAWC continues, be held to a different standard than electric and gas suppliers and prohibited from activities which a gas or electric utility could undertake.

#### **B. Staff's Position**

Staff urges the Commission to make an important policy statement for all utilities that operate under a holding company structure and that provide services to unregulated affiliates through the use of affiliate agreements. Although IAWC is compensated by AWR for services rendered under the amended affiliate agreement, Staff argues that this compensation is not enough to conclude that the agreement is in the public interest. Staff suggests that IAWC could have provided the service without the involvement of AWR and ratepayers would have benefited to a greater degree had the utility provided the service directly. In Staff's view, the proposed affiliate transaction is another example of utility personnel and facilities being exploited by the holding company structure that is prevalent across all utility industries. Such affiliate transactions, Staff avers, can not credibly be argued as arms length transactions because of the affiliate relationship of the parties. Nor can Staff properly analyze the program in question and the compensation for the services provided by IAWC because AWR no longer has any information that sets forth an economic analysis of the program. IAWC offers "benchmark" comparisons regarding the compensation that its affiliate utilities receive in other state jurisdictions for the same services provided to AWR. Staff argues that such "benchmarks" are meaningless because they result from the same intertwined relationship that exists in the instant proceeding.

Staff asks that the Commission put affiliate transactions to the appropriate standard and evaluate them according to market based data that is available for similar services and that the Commission hold to that standard even when the utility holding company structure dangles a tiny carrot as a benefit for ratepayers. Staff requests that the Commission fully consider the important policy that will result from adopting Staff's position in this proceeding. According to Staff, the Commission must favor the greater good of the public interest against any utility threat to "pick-up its toys" and "go home" should the Commission have the "audacity" to suggest that the affiliate derives too great of a benefit from the transaction in question at the expense of ratepayers. Staff earnestly wants the Commission to send a signal to utilities that utility assets and personnel are not available to be fully exploited by unregulated affiliates—a finding which Staff believes is clearly in the public interest.

Stemming from these sentiments is Staff's recommendation that the Commission reject the amended affiliate agreement between AWR and IAWC. Staff's basis for this recommendation is that the amended affiliate agreement does not identify the services that will be provided under its umbrella terms, and absent the details of such services, the Commission should not conclude that the provision of unknown services is in the public interest. Although in the initial phase of this proceeding Staff witness Everson did not object to this aspect of the amended affiliate agreement, Mr. Borden, upon further review, finds this aspect troublesome. In fact, had the WLPP not been identified as part of this petition, and the Commission approved the agreement, Mr. Borden believes that the Commission could have unknowingly approved services, such as the WLPP, that would not be in the public interest.

Staff argues that the rejection of the amended affiliate agreement because it is not specific enough is an important policy statement for the Commission to make. Staff asserts that a utility should not be allowed to mask future transactions that would fail the public interest standard if they were otherwise exposed to the light of day. As a general matter, Staff believes that the Commission should require greater specificity regarding the proposed services in general service agreements before considering approval. Only once the specific details of a service are known, does Staff believe that the Commission can make an informed decision about whether or not a specific service is in the public interest. In addition, Staff contends that conditions in an industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general agreements. By approving general service agreements, Staff asserts that the Commission is saying that all of the services provided under those agreements are in the public interest, yet without knowing all of the intended uses of the agreements and the details of the services provided. Staff does not believe it is possible for the Commission to reasonably reach this conclusion.

Staff also disagrees with IAWC's conclusion that rejection of the amended affiliate agreement because it is not specific enough is inconsistent with administrative law. While citing a number of cases for various legal principles, Staff avers that IAWC fails to cite the true case on point and its well-stated legal principle—namely, that the Commission is not a judicial body and its orders do not have the effect of *res judicata*.

Staff maintains that the Commission, as a regulatory body, must have the authority to address each matter before it freely, even if it involves issues identical to a previous case. Staff cites Mississippi River Fuel Corp. v. Illinois Commerce Commission, 1 Ill 2d 509, 513 (1953), in support of its position, which it believes is entirely consistent with the court's holding.

### **C. CUB and the AG's Position**

CUB and the AG are disturbed by the fact that the amended affiliate agreement goes beyond setting out the obligations necessary to allow the WLPP to be offered. In addition to distributing promotional materials, notifying AWR of occurrences covered by the WLPP, and billing for the WLPP, CUB and the AG point out that the amended affiliate agreement states, "[IAWC] shall perform such other and further services as are agreed to in a Service Order in the form attached hereto as Exhibit 1 executed by the parties during the Term thereof." (Section 6.1.4 of the amended affiliate agreement) CUB witness Kolata is concerned by the fact that Section 6.1.4 would allow IAWC to offer any services to AWR, limited only by the terms of the order in this docket and the Service Contract Act. All that the amended affiliate agreement requires, they note, is that a service order be in a form similar to the Service Order attached as Exhibit 1 and meet the terms and conditions set out in the agreement. The terms and conditions set forth in the amended affiliate agreement say nothing about the actual services that will be offered by AWR. CUB and the AG contend that such an open-ended provision, if approved, would obviate any future need for IAWC to come before the Commission for approval of any of a wide range of affiliate transactions with AWR. While such a finding may be perceived as efficient and beneficial by IAWC, CUB and the AG fear that it would run counter to the Commission's continuing oversight obligation set out in Section 7-101 of the Act.

Section 7-101 provides, in part, "... no contract ... for the furnishing of any service... made with any affiliated interest ... shall be effective unless it has first been filed with and consented to by the Commission ... ." CUB and the AG state that the Commission must evaluate an affiliate transaction by applying a public interest standard. Under Section 7-101, CUB and the AG note that if the Commission finds that a contract or arrangement between affiliates is not in the public interest, it may either condition approval to safeguard the public interest or disapprove the contract or arrangement. CUB and the AG remind the Commission that pursuant to Section 7-101, "Every contract or arrangement not consented to ... by the Commission ... is void."

CUB and the AG maintain that an evaluation of a transaction under the public interest standard requires that the Commission have information regarding the proposed transaction. Indeed, they continue, a finding that an affiliate transaction is in the public interest must be supported by substantial evidence based on the entire record of evidence. (220 ILCS 5/10-201(e)(iv)(A)) CUB and the AG assert that the limited terms and conditions provided in the amended affiliate agreement, excluding Exhibit 1, provide no information regarding the "other services" that IAWC shall perform pursuant to the future undisclosed Service Orders to which Section 6.1.4 of the agreement refers. Therefore, they conclude that IAWC's petition does not provide

sufficient information regarding any future Service Order to support finding the amended affiliate agreement in the public interest.

CUB and the AG also believe that IAWC misconstrues the nature of the Commission's evaluation of transactions with affiliates. They argue that Mr. Ruckman's over-simplified view of the Commission's responsibility regarding oversight of affiliate transactions fails to account for all of the public interest issues that the Commission must consider when evaluating an affiliate transaction. Specifically, they contend that Mr. Ruckman's response to both Mr. Kolata's and Mr. Borden's criticism of the "umbrella terms" of the amended affiliate agreement signifies a fundamental misunderstanding of the Commission's application of the public interest standard. In his rebuttal testimony, Mr. Ruckman opines that "[t]he issue before this Commission is not whether the WLPP itself is in the public interest. Rather, what is before this Commission is whether the proposed amended agreement and the interaction that it allows between IAWC and its affiliate, AWR, is in the public interest." (IAWC Ex. FLR-R, at 3) Mr. Ruckman goes on to assert that since the proposed agreement would allow ratepayers a share of the profits and all IAWC costs would be reimbursed by AWR, any future program would be in the public interest. If Mr. Ruckman's reading of the Commission's responsibility were correct, CUB and the AG insist that there would be no purpose in IAWC submitting the WLPP to the Commission in this Section 7-101 proceeding, which they note is not the case.

First, CUB and the AG observe that Mr. Borden looks directly at the financial potential of the WLPP, and finds that ratepayers derive insufficient benefit from the program for it to be in the public interest. Indeed, they note Mr. Borden's conclusion that the incremental cost of IAWC billing and insert services are expected to be minimal. Limiting the Commission's analysis to approving a general 15% over cost agreement would, they maintain, preclude the Commission from evaluating the relative financial benefits derived by ratepayers from individual affiliate transactions, such as the WLPP.

Second, CUB and the AG contend that a review of the testimony submitted in this docket demonstrates that the Commission must consider issues beyond mere financial benefit when evaluating whether an affiliate transaction is in the public interest. As an example, they note that Mr. Kolata and Mr. Borden both comment on IAWC's use of its letterhead to endorse the WLPP—a practice which allegedly raises consumer protection issues, specific to the WLPP, that they believe that the Commission must consider in determining whether the public interest is served by the WLPP. CUB and the AG fear that the use of IAWC letterhead to promote the interests of its affiliate, without clarification, is likely to generate customer confusion.

In a related example, CUB and the AG observe that due to the lack of information on the economics of the WLPP, Mr. Borden testifies, "it is not in the public interest for the Commission to authorize IAWC [through endorsing AWR's WLPP] to provide potentially inaccurate or misleading information to customers in its marketing of the WLPP." (Staff Ex. 3.0, at 26) CUB and the AG argue that this reasoning applies even more forcefully to the other unidentified potential programs allowed by the amended affiliate agreement. CUB and the AG are troubled by the fact that IAWC has provided

no information regarding any other programs that could be implemented via Section 6.1.4 of the amended affiliate agreement.

#### **D. Commission Conclusion**

Section 7-101 obligates the Commission to review all contracts and arrangements between affiliated interests to ensure that each contract or arrangement is in the public interest. Generally, relationships between affiliates merit greater scrutiny than relationships between unaffiliated entities due to the higher risk of improper behavior. In order to adequately protect the public interest, sufficient detail regarding the arrangements between affiliates is necessary.

In the instant proceeding, the amended affiliate agreement contains language in Section 6.1.4 allowing IAWC to provide services to AWR in addition to those associated with the WLPP so long as the request for such services follows a specific format. Although the WLPP is described in the amended petition and by Mr. Ruckman, the record contains no evidence on any other services which Section 6.1.4 of the amended affiliate agreement would permit. The Commission shares the concerns of Staff, CUB, and the AG regarding the open ended nature of the amended affiliate agreement. Setting aside for the moment the WLPP, it is not possible nor appropriate for the Commission to declare that any and all transactions between IAWC and AWR conducted pursuant to the generic terms of the amended affiliate agreement are in the public interest. Such a finding is in essence what IAWC seeks. Without knowing the details of any contemplated transactions between affiliates, the Commission would be remiss in its duties under Section 7-101 if it granted such blanket approval. While the terms of the amended affiliate agreement may appropriately govern some transactions between IAWC and AWR, it is simply not proper for the Commission to assume that a 15% mark up on costs and a 50/50 sharing of that markup is appropriate in all circumstances. Nor can the Commission assume that it would always be appropriate for IAWC to assist its affiliate in its marketing efforts.

IAWC also suggests that rejection of its amended affiliate agreement would amount to a violation of its due process rights because the Commission would not be following the law and Commission rules for reviewing affiliate agreements. IAWC is mistaken if it believes that a code part governing the Commission's review process exists. Moreover, as the Commission becomes more familiar with the types of arrangements (and abuses) that a utility and an affiliate may agree to, the Commission must be given the necessary latitude to evaluate and respond to proposed affiliate agreements. In addition, allowing the Commission to reject problematic affiliate agreements prior to their implementation will permit the Commission to conserve resources that would otherwise have to be spent on monitoring and potentially litigating arrangements under those agreements in the future.

Accordingly, the Commission will not approve the amended affiliate agreement to the extent that it would authorize IAWC and AWR to engage in an unknown number of unknown arrangements without the benefit of Commission review. As for the WLPP, the one arrangement under the amended affiliate agreement that the Commission does

know something about, the Commission will next review whether its approval would be in the public interest.

## **V. THE WLPP**

As indicated above, the WLPP would be a voluntary program offered by AWR that a customer enrolls himself in. The WLPP would pay up to \$3,000 per occurrence for the repair of leaks, resulting from normal wear and tear only, in the customer-owned portion of the water line. Mr. Ruckman testifies that AWR anticipates charging an initial annual fee of \$48-\$60 per year based on the cost of plumbing labor in the specific geographic area in which the customer resides. Customers electing to institute the service with AWR would be given the option to either pay the service fee directly to AWR in an annual lump sum, or to elect to have the annual service fee divided into installments to be paid along with the customer's water bill. Mr. Ruckman states that for most customers, the water bills are provided monthly and, therefore, the annual service fee would be divided by 12 and  $1/12^{\text{th}}$  of the fee would be included on the monthly water bill as a separate line item. For customers billed bi-monthly, he states that  $1/6^{\text{th}}$  of the annual service fee would be shown on each water bill, if the customer elected the installment option.

Customers would be informed of the WLPP through a letter printed and mailed by AWR. IAWC would provide its customer list to AWR as well as the signature of IAWC's president for use on the letter. The letter would include a form that customers could use to initiate service and a toll-free number that customers could call with any further questions they had regarding the service. The toll-free number would connect customers with AWR's call handlers who are located at the AWW national call center in Alton, Illinois. Mr. Ruckman testifies that these call takers are specifically dedicated to AWR and are not billed to IAWC's operations.

The only additional involvement of IAWC in the process, according to Mr. Ruckman, would be when an enrolled customer would have a covered service line incident. In all cases, whether a customer is enrolled in the program or not, a customer who is experiencing a potential service line problem would be expected to call IAWC's toll free number. An IAWC field representative would inspect the customer's water service and, should the field representative determine that there is a problem with the customer's service line, the field representative would examine the service order to determine if the customer was enrolled in the WLPP. Through computer processing, service orders for customers who are enrolled in the program would automatically note that the customer is so enrolled. For customers who are enrolled in the program, Mr. Ruckman states that IAWC's field representative would call the toll free number provided by AWR to notify AWR that the customer has a covered service line incident and AWR would handle the repair of the customer's service line from that point forward. Mr. Ruckman anticipates that IAWC's field representative would spend an average of five minutes in contacting the AWR service representatives to institute repair service for the customer and this time would be charged to AWR, both labor and overheads attributed to such time, as well as a proportionate amount of cell phone costs.



Mr. Ruckman testifies further that AWR might also initially request IAWC to recommend plumbing contractors based on its experience who could provide adequate services in the geographical areas in which IAWC operates. To the extent this administrative service is provided to AWR, the labor to do so would be charged to AWR. He notes that any additional promotional materials would be produced and distributed by AWR.

**A. IAWC's Position**

IAWC maintains that the WLPP is in the public interest because it provides a valuable service to those customers who enroll and a benefit in the form of shared profits to all customers and therefore should be approved under Section 7-101 of the Act. Specifically, Mr. Ruckman points out that for customers who elect to participate in the WLPP and experience a water line failure due to normal wear and tear, the need to find a qualified, reliable plumbing contractor who can timely make the required repairs is eliminated. He also notes that service line repairs can be costly, and that customers participating in the program shift the risk of potential service line repairs to AWR in return for payment of the designated service fee.

IAWC contends further that the WLPP compares favorably to the telephone line and gas line protection programs offered directly by SBC, Verizon, and NICOR discussed above. Despite the alleged value to customers, IAWC argues that it could not provide the protection program itself, as SBC, Verizon, and NICOR do, because IAWC believes that to do so would violate both its tariffs and the Act. Mr. Ruckman states that pursuant to ICC No. 22, Third Revised Sheet No. 37, Section 8(G), a customer's service pipe must be installed in a workmanlike manner and be furnished, installed, and maintained by the customer free from leaks and other defects, at the customer's own expense and risk. If IAWC agreed to maintain a customer's water line under the WLPP, IAWC maintains that doing so would violate Section 7-102(f) of the Act, which prohibits a public utility from guaranteeing the performance of any contract or other obligation of any other person, firm, or corporation without the consent and approval of the Commission. In any event, IAWC states that it does not employ licensed plumbers, so its employees could not perform the work.

**B. Staff's Position**

Staff asserts that the WLPP is not in the public interest and should be rejected.<sup>4</sup> Among Staff's criticisms of the WLPP is that it can not properly analyze the program and the compensation for the services provided by IAWC because neither IAWC nor AWR no longer has any information that sets forth an economic analysis of the program. IAWC, Staff contends, merely offers "benchmark" comparisons regarding the compensation that its affiliate utilities received in other state jurisdictions for the same services provided to AWR. Such "benchmarks" are meaningless, according to Staff, because they result from the same intertwined affiliate relationship that exists in this proceeding. Staff also urges the Commission to reject the WLPP because to do otherwise would encourage other utilities and their affiliates to destroy information that is pertinent to a Commission decision or simply argue that they do not know the whereabouts of the requested information.

IAWC's endorsement of a service that benefits from IAWC's provision of utility service also concerns Staff since it is not known whether the WLPP provides an economic benefit to customers. Since Staff has not reviewed the economic analysis of the WLPP, because it is not available, Staff is unable to provide an opinion as to whether the service is likely to be beneficial to customers. Staff does not understand how IAWC can endorse a program under such circumstances. As such, Staff is opposed to the Commission authorizing IAWC's endorsement and marketing of the WLPP, which could be an unnecessary purchase for the vast majority of customers. In other words, Staff maintains that it is not in the public interest for the Commission to authorize IAWC to provide potentially inaccurate or misleading information to customers in its marketing of the WLPP. Staff believes that IAWC may sacrifice a reasonable description of the WLPP to its customers at the direction of its affiliate that stands to profit from IAWC's endorsement.

With regard to how the WLPP compares to the other utility service protection programs discussed, Staff witness Borden agrees with IAWC's analysis of the sharing of benefits under the WLPP but emphasizes that he would not support the compensation and sharing of benefits for those programs if he were testifying in proceedings addressing those programs. Mr. Borden does not believe that much can be done with respect to the SBC service because of the alternative regulation of SBC. As for Verizon, however, he recommends that the appropriate Staff members review Verizon's provision of their customer repair service and address it in an appropriate proceeding before the Commission. For the energy industry, Staff is internally reviewing affiliate agreements for each company to identify services that may not be in the public interest and how to proceed once identified.

Staff also takes issue with IAWC's claim that it is barred by the Act and its own tariffs from providing the WLPP. According to Staff, IAWC's provision of the repair work through the WLPP would not constitute repair work performed on behalf of the customer nor would it change the requirement that the customer maintain its service pipes free

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<sup>4</sup> In the event that the Commission did not reject the WLPP, Staff recommends that several conditions be imposed on the WLPP prior to approval.

from leaks and other defect. Staff avers that the WLPP, as an optional program, does not replace IAWC's tariff requirement, but instead provides another option for the customer to pay for repairs to service lines that may be needed. Customers who subscribe to the WLPP are paying for the cost to repair their service lines through monthly or annual premiums. Staff understands the WLPP, if approved, to be a means for a customer to mitigate risk since it is still the customer's responsibility to repair his service line.

Staff further states that IAWC's citation to Section 7-102 is incomplete. While subsection (f) reads as IAWC suggests, Staff notes that the first sentence of Section 7-102 provides that the Commission can consent to and approve of a utility's guaranteeing the performance of a contract or other obligation of another person, firm, or corporation. Thus, Staff concludes, the plain language of the statute contradicts IAWC's position.

### **C. CUB and the AG's Position**

CUB and the AG support the WLPP so long as certain conditions that they recommend are adopted.<sup>5</sup> First among the proposed conditions is the addition of language to the letter introducing the WLPP to IAWC's customers that would clearly indicate that AWR is an unregulated affiliate of IAWC and that customers are not required to buy products or services from AWR in order to continue to receive service from IAWC. Absent such language, CUB witness Kolata fears that the introductory letter as proposed may create an atmosphere ripe for confusion, as many customers, particularly senior citizens, may conclude that the water utility itself is offering the program and that they have no choice but to participate. Accordingly, it is essential that IAWC be required to insert a clear and conspicuous disclaimer in its letter of introduction and all other joint marketing materials. Mr. Ruckman indicates that IAWC is willing to include the language recommended by Mr. Kolata.

Additional changes to the introductory letter sought by CUB and the AG include removal of the phrases "save you thousands of dollars" and "countless hours of worry and hassle." Mr. Kolata contends that such phrases, when coupled with the IAWC letterhead, create customer confusion and unrealistic expectations of the potential benefit of the WLPP. CUB and the AG note that Staff witness Everson, in the initial phase of this proceeding, recommended several changes to the introductory letter because it suggests that customers will receive greater benefit than possible from the WLPP. Ms. Everson stated that the benefits of the WLPP should be apparent to the customer without the use of scare tactics. CUB and the AG concur with Staff's recommendations that the phrase "save you thousands of dollars" be replaced with "prevent unexpected repair bills" and that the phrase "countless hours of worry and hassle" be removed from any letters, flyers, or bill inserts and that its use be prohibited. Mr. Ruckman has accepted these recommendations.

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<sup>5</sup> One of the conditions supported by CUB and the AG was the removal of Section 6.1.4 of the amended affiliate agreement. CUB and the AG strongly oppose the approval of an agreement that would give IAWC unfettered leave to enter into service agreements of any type with the unregulated AWR. This condition will not be discussed separately in light of the Commission's conclusion in Section IV, *supra*.

Another phrase that CUB and the AG call for the removal of from the letter introducing the WLPP is "you can't predict it." Mr. Kolata contends that this phrase is likely untrue and creates customer confusion. He notes further that IAWC would not offer the WLPP through AWR were water line problems due to normal wear and tear truly random. Mr. Kolata insists that IAWC must have undertaken a risk/benefit analysis in order to determine the appropriate rate to charge for this service and whether or not it was a lucrative venture. Moreover, he continues, the fact that the service is offered solely to cover normal wear and tear indicates IAWC's awareness or knowledge of the durability of water and sewer line pipes. IAWC does not accept this recommendation and argues that it is impossible to predict when a water line will fail.

The remaining condition endorsed by CUB and the AG has been accepted by IAWC and pertains to the provision of similar services by IAWC to a non-affiliated company. While Staff argues that IAWC should be required to provide the same terms and conditions to any non-affiliated entity (if the Commission rejects Staff's primary recommendation to reject the WLPP), CUB and the AG suggest that similar services be provided to non-affiliated entities at "reasonable rates." They contend that their position takes into account the possibility that IAWC's provision of similar services to an unaffiliated entity may entail costs different from those associated with AWR.

#### **D. Commission Conclusion**

Just as it is troubled by the open ended nature of the amended affiliate agreement, the Commission is troubled by the lack of any analysis justifying the offering of the WLPP to Illinois rate payers. Staff, CUB, and the AG are correct in their observations that the record is void of any economic or other analysis of the WLPP. Mr. Ruckman himself admits that he does not know how often the customer-owned portion of a water line fails due to normal wear and tear. Nor is he even certain that IAWC maintains records that would answer this question. In the absence of any substantive evidence demonstrating that the WLPP is properly priced or is even legitimately necessary, it is not in the public interest to allow IAWC to lend its name and assistance in marketing the WLPP to Illinois rate payers. The Commission acknowledges that an appropriate analysis could have been done and is not available for one reason or another, but to simply accept IAWC's assertions that the WLPP is in the public interest in the face of legitimate questions raised by Staff, CUB, and the AG would be a disservice to Illinois consumers and an offense to the Commission's obligations under the Act. Accordingly, the Commission finds that the WLPP has not been shown to be in the public interest and will not be approved.

## VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) IAWC is an Illinois corporation that is duly authorized by the Commission to provide water and sanitary sewer service to the public in the State of Illinois, and is a public utility within the meaning of Section 3-105 of the Act;
- (2) the Commission has jurisdiction over IAWC and the subject matter herein;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order on Reopening are supported by the record and are hereby adopted as findings of fact;
- (4) IAWC's Motion to Withdraw its amended petition is denied; and
- (5) IAWC's amended petition for the Commission's approval to enter into an affiliated interest agreement with AWR, as described in the prefatory portion of this Order on Reopening, should be denied because it is not in the public interest.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the amended petition filed by Illinois-American Water Company seeking approval to enter into an affiliated interest agreement with American Water Resources, Inc., as described in the prefatory portion of this Order on Reopening, is hereby denied.

IT IS FURTHER ORDERED that Illinois-American Water Company's Motion to Withdraw its amended petition is denied.

IT IS FURTHER ORDERED that all motions, petitions, and objections made in this proceeding which remain undisposed of shall be disposed of consistent with the ultimate conclusions herein contained.

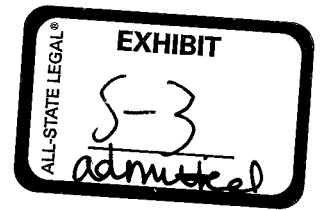
IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 16th day of September, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman

ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 2-9

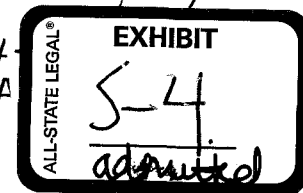


Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S2-9

---

- Q. Re: Company Response AAW S1-19. Provide copies of all workpapers, costs, customers, etc. used by New Jersey American in its determination referenced in this response.
- A. AWR does not have access to any records of New Jersey American Water. To the best of AWR's knowledge, as stated in AAW S1-19, there are no documents supporting the determination of the \$0.10 per bill amount rate.
-



Timothy Sabo, Esq.

Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007-2927

August 1, 2005

Service Line Protection Program  
Docket No. WS-01303A-05-0170

Dear Tim:

Enclosed for your review are Arizona American Water's responses to Staff's Data Requests 7-1 through 7-7.

Please contact me with any other questions you or Staff may have.

Very truly yours,

Craig A. Marks  
Corporate Counsel

Cc: Linda Jaress

Enclosures:

Legal

Name Craig A. Marks  
Phone (623) 445-2442  
Fax (623) 445-2451  
E-Mail Craig.Marks@amwater.com

REC

AUG 04 2005

LEGAL DIV.  
ARIZ CORPORATION COMMISSION

Arizona American Water

101 Corporate Center  
19820 N. 7<sup>th</sup> Street -  
Suite 201  
Phoenix, Arizona 85024  
USA

T +1 623 445 2400  
F +1 623 445 2451  
I www.amwater.com

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-1**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043  
Company Response Number: AAW S7-1

---

- Q. Provide a copy of the Agreement modified to reflect the Company's testimony with the modifications highlighted.
- A. Attached is a copy of a draft modified agreement, along with a version that highlights all changes from the filed agreement.
-



**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

**September \_\_, 2005**

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**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

This Service Agreement, dated as of the \_\_\_ day of September, 2005 (the "Agreement"), is by and between the AMERICAN WATER RESOURCES, INC. (AWR), a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043, and ARIZONA AMERICAN WATER COMPANY (Utility), a corporation organized and existing under the laws of the State of Arizona, with its principal office located at 19820 North 7<sup>th</sup> Street, Suite 201, Phoenix, Arizona 85024.

WHEREAS, AWR provides certain services to utility customers, as more particularly described on Appendix A which is attached hereto and incorporated herein by reference, which list may be modified or amended from time to time by AWR (hereinafter the "Programs"); and

WHEREAS, Utility is the owner of a public water supply system; and

WHEREAS, many of Utility's residential customers may desire to and qualify to participate in one or more of AWR's Programs; and

WHEREAS, Utility desires to make certain or all of the Programs available to its customers upon the terms and conditions contained herein; and

WHEREAS, AWR desires to contract with Utility for certain customer support services for the Programs; and

WHEREAS, Utility possesses the necessary ability and experience to provide such customer support services and is willing to provide such services for the Programs upon the

terms and conditions contained herein; and

WHEREAS, it is the mutual desire of the parties to enter into this Agreement providing for the customer support for the Programs;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and subject to the terms and conditions herein stated, AWR and Utility agree as follows:

SECTION 1. Definitions.

The following words and phrases when used in this Agreement shall have the following meaning:

"Agreement" means this Agreement between AWR and Utility.

"Force Majeure" means those events set forth in Section 13 of this Agreement.

"Fully Distributed Costs" means direct costs, a contribution to common costs, and overhead in accordance with applicable regulations of the Arizona Corporation Commission (ACC), except taxes as discussed in Section 5.

Should the ACC assign different costs than Utility has assigned, once such assignment is final and non-appealable, these costs shall be the Fully Distributed Costs, until such time as the ACC assigns different costs, at which time such newly assigned costs shall be the Fully Distributed Costs. Whether to appeal a decision of the ACC shall be in Utility's sole discretion.

"Services" means all of the duties, obligations, and services as defined herein to be provided by Utility that are related to the performance and operation of AWR's Programs.

SECTION 2. Appointment of Utility.

AWR hereby engages and appoints Utility to provide certain customer support services for the Programs.

SECTION 3. Term; Termination.

3.1 Term. The term of this Agreement shall commence on September 1, 2005, and be for a period of one (1) year unless sooner terminated or extended as hereinafter provided.

3.2 Renewal. The Agreement will automatically renew itself for periods of one (1) year, each following one after the other, unless either party gives written notice of termination to the other party in accordance with Section 3.3.1.1.

3.3 Termination.

3.3.1 Termination Without Cause:

3.3.1.1 Procedure - After the initial one (1) year term, this Agreement may be terminated without cause or penalty by either party upon giving the other party sixty (60) days written notice in advance of the date upon which the termination becomes effective. This Agreement shall automatically terminate at such time as either party, or its successor is no longer an affiliate of American Water Works Company, Inc.

3.3.1.2 Transition Services Following Termination Without Cause -

Upon termination of the Agreement without cause, Utility shall continue to provide services to AWR, at AWR's request, for a period of not longer than sixty (60) days during AWR's transition to another service provider. Such transition services shall be provided under and subject to the same terms and provisions of this Agreement, including compensation.

3.3.2 Termination Upon Material Breach - Either party to the Agreement may terminate this Agreement upon material breach by the other party. The non-breaching party shall provide written notice of such breach to the other party, setting forth in detail the alleged failure and/or deficiency, and, if such breach is not corrected within thirty (30) days from receipt of written notice by certified mail, this Agreement shall be terminated.

#### SECTION 4. Compensation.

4.1 Fee. The fee paid to Utility by AWR for Services rendered pursuant to this Agreement shall be equal to one hundred and fifteen (115%) percent of the Fully Distributed Costs incurred by Utility in providing the Services except billing and collection services. The fee for billing and collection services rendered by Utility, as set forth in Paragraph 6.1.3 below, shall be at a rate of \$.10 per customer per monthly billing period and apply in the aggregate to customers participating in one or more of AWR's Programs. The \$.10 rate may be adjusted from time to time as determined by the ACC to be consistent with any other such billing and collection service rates charged by Utility, under tariff, to others.

4.2 Allocation by Regulating Authority. Notwithstanding the fee schedule contained in Section 4.1, should the ACC disallow any cost of the Utility in excess of the Fully Distributed Costs as a result of the services provided to AWR pursuant hereto, AWR shall reimburse Utility for such disallowed costs, within thirty (30) days of receipt of notice of same and the fees due pursuant hereto shall be adjusted to reflect such allocation by the ACC.

#### 4.3 Reporting and Payments.

4.3.1 Utility shall maintain detailed records of all costs incurred in providing services to AWR. Utility will make such detailed records available for AWR's periodic review upon request by AWR, during normal business hours, at Utility's principal office.

4.3.2 Utility shall invoice AWR monthly or quarterly, at Utility's discretion, for the fee for services on or about the tenth business day of each billing period during the term of this Agreement. The invoice shall detail the services provided and the costs incurred. AWR shall pay such fee to Utility within fifteen (15) days of the date of the invoice.

#### SECTION 5. Taxes.

Any tax or other amount which Utility may be required to pay to or collect for a

government agency upon or with respect to the Services rendered hereunder, or the use or delivery of any products or parts thereof on behalf of AWR, except income taxes, will be billed to AWR as separately stated charges and will be paid by AWR in addition to the fees paid pursuant to Section 4. In the event AWR disputes the taxability of an item hereunder, Utility will continue to collect such tax unless and until AWR provides Utility with documentation authorized and prescribed by the taxing authority, such as a certificate of exemption, relieving Utility from liability for the collection and payment of such tax.

#### SECTION 6. Scope of Services.

6.1 Utility agrees that it shall provide the following customer support services for the Programs in accordance with the terms and provisions of this Agreement:

6.1.1 Reserved.

6.1.2 Notification of Claim. Should a Utility associate, as a part of his/her normal duties, determine that a Utility customer has a covered occurrence with the Customer's water or sewer service line, the Utility associate shall notify AWR by calling a toll-free telephone number to be supplied by AWR. AWR shall then engage a qualified contractor to provide the covered services to the customer. AWR shall timely provide the necessary information to cause Utility's customer records to reflect when coverage is available.

6.1.3 Billing and Collection. AWR shall provide Utility with a list of enrolled customers in its Programs who have chosen to have charges from AWR included on their bill from Utility, and shall keep such list up to date. Utility shall include such charges on the customer's bill and collect such charges from the customer until such time as the customer or AWR notifies Utility that the customer is no longer receiving service from AWR or has elected a different payment option. Utility shall forward collected payments from enrolled customers to AWR within fifteen days following the end of each calendar month for amounts collected during



such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.

SECTION 7. Provision of Information.

Except as provided herein, any specifications, diagrams, sketches, models, examples, tools, computer or other apparatus, programs, software, technical or business information, written, oral or otherwise (all thereafter collectively referred to as "Confidential Information"), furnished by one party (hereinafter referred to as the "Disclosing Party") to the other party (hereinafter referred to as the "Receiving Party") under this Agreement or in contemplation of this Agreement will remain the property of the Disclosing Party and will be held Confidential by the Receiving Party. All copies of such information will be returned to the Disclosing Party upon request. The Receiving Party, and any individual assigned by the Receiving Party will not permit the duplication, use or disclosure of the Confidential Information whether such disclosure be oral, written, in the form of computer tapes, drawings or other medium to any person other than the Receiving Party's employees, agents or representatives who must have such information to provide the Services, unless otherwise specifically authorized in writing by the Disclosing Party.

Confidential Information does not include any information which, at the time of disclosure, is generally known by the public, is rightfully obtained from third parties, is independently developed by the Receiving Party and any individual assigned by the Receiving

Party outside the scope of its performance herein, or had been in the possession of the Receiving Party and any individual assigned by the Receiving Party prior to its commencement of the performance of its services.

The Receiving Party and any individual assigned by the Receiving Party agrees that: (1) this covenant not to disclose our use Confidential Information shall survive termination of this Agreement; and (2) it shall be liable for any and all breaches of such covenant by the Receiving Party, its employees, agents or representatives, whether such breach occurs during or after the term of this Agreement.

The Receiving Party shall take such steps as may be necessary in order to limit access to the Confidential Information on a need-to-know basis and assure compliance by the employees, agents and representatives to whom such information is given.

The provisions of this section shall survive termination of this Agreement.

It is understood that the Receiving Party may be required to furnish information to judicial, regulatory, or administrative bodies. In such an event, the Receiving Party will promptly notify the Disclosing Party of such requirement and will cooperate with the Disclosing Party should the Disclosing Party desire to seek a protective order to prevent the public disclosure of its information.

#### SECTION 8. Compliance with Laws.

Both parties agree to comply with the provisions of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal and state laws, rules, regulations and codes with which they are obligated to comply in the performance of this Agreement, including the procurement of permits and certificates where needed. Both parties further agree not to discriminate against any employee or applicant for employment because of race, color, religion,

sex, national origin, age or handicap, and to comply with all applicable federal and state laws, orders, rules and regulations on this subject during the performance of this Agreement.

This Agreement shall be subject to any and all applicable federal, state and local laws, regulations, and ordinances, as well as any applicable tariffs. To the extent necessary, the parties agree to amend this Agreement to conform to the requirements of any such laws, regulations, ordinances, or tariffs.

AWR shall provide Utility with evidence reasonably requested by Utility to demonstrate compliance herewith.

#### SECTION 9. Insurance.

9.1 AWR shall, during the term of this Agreement, maintain the following insurance coverages with respect to the Programs, and shall include Utility as an Additional Insured:

9.1.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$2,000,000, combined single limit.

9.1.2 Comprehensive Automobile Liability with limit of \$2,000,000, combined single limit.

9.1.3 Excess Commercial General and Automobile Liability with limit of \$2,000,000, excess of \$2,000,000.

9.2 AWR shall cause each contractor it engages to perform services under the Programs (collectively "Repair Contractors"), during the term of this Agreement, to maintain the following insurance coverages with respect to the Programs, which coverages in subsections 9.2.1-9.2.3 shall include Utility as an Additional Insured:

9.2.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$1,000,000, combined single limit.

9.2.2 Comprehensive Automobile Liability with limit of \$1,000,000, combined single limit.

9.2.3 Excess Commercial General and Automobile Liability with limit of \$1,000,000, excess of \$1,000,000.

9.2.4 Workers Compensation coverage with Statutory Limits.

9.3 AWR shall, and shall cause its Repair Contractors to, furnish Utility with certificates of insurance evidencing coverage as required by this Paragraph.

#### SECTION 10. Obligations of AWR.

10.1 Development of Informational Materials. AWR shall be responsible for developing, producing, and printing all informational materials for the Programs.

10.2 Training. At its sole cost, AWR shall provide all necessary training and information to Utility personnel as is necessary to allow Utility to fully perform hereunder. Such training will be specific to educating Utility employees in the operation, terms, and conditions of the Programs. Utility shall make the necessary arrangements to provide a location for such training at or near Utility's facilities.

10.3 Contractors. AWR shall be responsible for engaging qualified independent contractors to perform the services included in the Programs. AWR shall contract with and maintain a sufficient number of contractors to perform promised services under the Programs, during the term of this Agreement. The cost of all services provided by such contractors shall be paid by AWR. Nothing in this Agreement shall be deemed to create any obligation on the part of Utility to undertake performance of any such services or pay for such services by the contractors engaged by AWR.

10.4 Administration. AWR shall be responsible for coordinating all administrative activities for the Programs and its customers including, but not limited to, enrollments, billings,

accounting, marketing, financial analysis and reporting. AWR shall promptly notify Utility of customer enrollments in the Programs, including any changes in enrollment or billing status.

SECTION 11. Joint Obligations of the Parties.

- 11.1 AWR and Utility agree to cooperate to review existing planning, management and operations practices for the Programs.
- 11.2 Utility will not provide any customer-related information to AWR, except for information concerning a customer who has advised Utility that he or she has enrolled in one of the Programs and that is reasonably related to AWR's administration of the Program, including billing and collection of Program fees. This information will not include customer consumption data or information concerning the customer's payment history for utility services.

SECTION 12. Arbitration.

It is the stated intent and purpose of both parties at all times to reach agreement by negotiation between AWR and Utility, without recourse to arbitration. In the event, however, that such dispute or difference is not settled, either party may request that the matter be referred to arbitration. The demand for arbitration must be submitted to the American Arbitration Association within sixty (60) calendar days after the date of such request, in which case the arbitration shall cover and resolve any then existing controversy or claim between the parties hereto which directly or indirectly arises out of or relates to this Agreement. The arbitration shall be conducted in Voorhees, New Jersey in accordance with the rules and procedures then existing under the Commercial Arbitration Rules of the American Arbitration Association, provided that notwithstanding anything to the contrary contained in such Rules the following shall apply: The arbitration board shall consist of three arbitrators. AWR shall choose one

arbitrator and Utility shall choose one arbitrator. If the two arbitrators appointed by the parties fail to agree within five (5) business days upon the selection of a third arbitrator, the third arbitrator shall be selected from a list of arbitrators supplied by the American Arbitration Association or otherwise in accordance with such Rules. After the appointments of the third arbitrator, the arbitration board shall meet as necessary for the purpose of reaching a determination in the dispute or difference, and the decision of the majority of the board, submitted in writing, to AWR and Utility shall be final and binding upon both parties. Judgment upon any decision rendered by such arbitration board may be entered in any court having jurisdiction. Each party shall bear the expense of its own arbitrators and witnesses, and the expenses of the third arbitrator and any general expenses of the arbitration shall be born equally by both parties.

#### SECTION 13. Force Majeure.

If, because of any act or occurrence beyond the reasonable control of either party, including, without limitation, acts of God, legislation or lawful regulations of any governmental body, court orders, fire, flood, explosion, strikes, labor disputes or shortage, wars or civil commotion, either party is reasonably prevented from performing any or all of its obligations hereunder, and if the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned Force Majeure, any time or date limitations shall be extended to the extent such party is so prevented.

#### SECTION 14. Assignments.

This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to an affiliate or successor of either party.

#### SECTION 15. Amendments.

This Agreement may be modified only by a written amendment signed by both parties.

SECTION 16. Notices.

All notices provided for in this Agreement shall be in writing and shall be deemed to have been given when hand delivered or deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, as follows:

If to AWR:

American Water Resources, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: Graham Wood, President

If to Utility:

Arizona American Water Company  
19820 North 7th Street, Suite 201  
Phoenix, Arizona 85024  
Attention: Rob Kuta, Vice President

SECTION 17. Governing Law.

This Agreement, including the validity thereof and the rights and obligations of the parties thereunder, shall be construed in accordance with, and governed by the laws of the State of New Jersey.

SECTION 18. Indemnification.

18.1 AWR shall, and shall cause its Repair Contractors to, defend, indemnify and hold harmless Utility, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of AWR, its Repair Contractors, or their respective officers, employees, agents, contractors, and subcontractors in connection with the services rendered to Utility by AWR pursuant to the terms of this Agreement.

18.2 Utility shall defend, indemnify and hold harmless AWR, its officers, directors, employees and agents from and against any and all liability, including liability to third parties,

for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of Utility, its officers, employees, agents, contractors, and subcontractors in connection with the services rendered to AWR by Utility pursuant to the terms of this Agreement.

SECTION 19. No Waiver.

The failure of a party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

SECTION 20. Severability.

In case one or more of the covenants, terms or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed and the remaining covenants, terms, and provisions shall remain in full force and effect.

SECTION 21. No Third-Party Beneficiaries.

No customer of the Programs, contractor of AWR, or any other third party shall be deemed a third-party beneficiary of this Agreement.



SECTION 22. Independent Contractor.

It is understood that the relationship of Utility to AWR is that of an independent contractor and not that of an employee and or agent of AWR. None of the employees or agents of Utility shall be considered employees of AWR. None of the employees or agents of AWR shall be considered employees of Utility. Each party shall be wholly responsible and liable for the employment taxes and withholdings due as a result of their performance hereunder.

SECTION 23. Complete Agreement.

This Agreement sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

SECTION 24. Titles and Headings.

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

SECTION 25. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 26. Condition Precedent.

This Agreement may be conditioned upon any necessary approval of the ACC.

SECTION 27. Limitation of Liability.

**NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL,  
CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING OUT  
OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT**

**LIABILITY OR OTHERWISE, ATTRIBUTABLE TO OR RESULTING FROM ITS**

**PERFORMANCE HEREUNDER.** In no event will Utility's liability for damages caused by its failure to supply material or perform services in a proper or timely manner exceed the amount paid by AWR to Utility for such materials or services.

**SECTION 28. Non-Exclusive**

This Agreement is non-exclusive and Utility may enter into similar agreements with other entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

AMERICAN WATER RESOURCES, INC.

By: \_\_\_\_\_  
President

ARIZONA AMERICAN WATER COMPANY

By: \_\_\_\_\_  
Vice President

## **APPENDIX A**

### **Water Line Protection Program:**

For a periodic fee, Utility customers may enroll in the Water Line Protection Program that, subject to its terms and conditions, provides a service to repair customer-owned water lines that leak or break due to normal wear and tear.

### **Sewer Line Protection Program:**

For a periodic fee, Utility customers may enroll in the Sewer Line Protection Program that, subject to its terms and conditions, provides a service to clear or repair blocked customer-owned sewer lines that become clogged or blocked due to normal wear and usage.

**AGREEMENT FOR SUPPORT SERVICES**

**BETWEEN**

**AMERICAN WATER RESOURCES, INC.**

**AND**

**ARIZONA AMERICAN WATER COMPANY**

**~~March~~September \_\_, 2005**

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**AGREEMENT FOR SUPPORT SERVICES**  
**BETWEEN**  
**AMERICAN WATER RESOURCES, INC.**  
**AND**  
**ARIZONA AMERICAN WATER COMPANY**

This Service Agreement, dated as of the \_\_\_ day of ~~March~~September, 2005 (the "Agreement"), is by and between the AMERICAN WATER RESOURCES, INC. (AWR), a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 1025 Laurel Oak Road, Voorhees, New Jersey 08043, and ARIZONA AMERICAN WATER COMPANY (Utility), a corporation organized and existing under the laws of the State of Arizona, with its principal office located at 19820 North 7<sup>th</sup> Street, Suite 201, Phoenix, Arizona 85024.

WHEREAS, AWR provides certain services to utility customers, as more particularly described on Appendix A which is attached hereto and incorporated herein by reference, which list may be modified or amended from time to time by AWR (hereinafter the "Programs"); and

WHEREAS, Utility is the owner of a public water supply system; and

WHEREAS, many of Utility's residential customers may desire to and qualify to participate in one or more of AWR's Programs; and

WHEREAS, Utility desires to make certain or all of the Programs available to its customers upon the terms and conditions contained herein; and

WHEREAS, AWR desires to contract with Utility for certain customer support services for the Programs; and

WHEREAS, Utility possesses the necessary ability and experience to provide such customer support services and is willing to provide such services for the Programs upon the

terms and conditions contained herein; and

WHEREAS, it is the mutual desire of the parties to enter into this Agreement providing for the customer support for the Programs;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and subject to the terms and conditions herein stated, AWR and Utility agree as follows:

SECTION 1. Definitions.

The following words and phrases when used in this Agreement shall have the following meaning:

"Agreement" means this Agreement between AWR and Utility.

"Force Majeure" means those events set forth in Section 13 of this Agreement.

"Fully Distributed Costs" means direct costs determined in, a manner that complies with the standards contribution to common costs, and procedures for the apportionment of special, joint, and common costs between the Utility and any non-regulated entity overhead in accordance with applicable regulations of the Arizona Corporation Commission (ACC), except taxes as discussed in Section 5. ~~A fully distributed costing methodology apportions the total costs of a group of services or products, including the authorized rate of return, among the individual services or products in that group.~~

Should the ACC assign different costs than Utility has assigned, ~~such commission or board assigned costs, once such assignment is final and non-appealable, these costs~~ shall be the Fully Distributed Costs, until such time as the ACC assigns different costs, at which time such newly assigned costs shall be the Fully Distributed Costs. Whether to appeal a decision of the ACC shall be in Utility's sole discretion.

"Services" means all of the duties, obligations, and services as defined herein to be provided by Utility that are related to the performance and operation of AWR's Programs.



SECTION 2. Appointment of Utility.

AWR hereby engages and appoints Utility to provide certain customer support services for the Programs.

SECTION 3. Term; Termination.

3.1 Term. The term of this Agreement shall commence on ~~January~~September 1, 2005, and be for a period of one (1) year unless sooner terminated or extended as hereinafter provided.

3.2 Renewal. The Agreement will automatically renew itself for periods of one (1) year, each following one after the other, unless either party gives written notice of termination to the other party in accordance with Section 3.3.1.1.

3.3 Termination.

3.3.1 Termination Without Cause:

3.3.1.1 Procedure - After the initial one (1) year term, this Agreement may be terminated without cause or penalty by either party upon giving the other party sixty (60) days written notice in advance of the date upon which the termination becomes effective. This Agreement shall automatically terminate at such time as either party, or its successor is no longer an affiliate of American Water Works Company, Inc.

3.3.1.2 Transition Services Following Termination Without Cause -

Upon termination of the Agreement without cause, Utility shall continue to provide services to AWR, at AWR's request, for a period of not longer than sixty (60) days during AWR's transition to another service provider. Such transition services shall be provided under and subject to the same terms and provisions of this Agreement, including compensation.

3.3.2 Termination Upon Material Breach - Either party to the Agreement may terminate this Agreement upon material breach by the other party. The non-breaching party shall

provide written notice of such breach to the other party, setting forth in detail the alleged failure and/or deficiency, and, if such breach is not corrected within thirty (30) days from receipt of written notice by certified mail, this Agreement shall be terminated.

#### SECTION 4. Compensation.

4.1 Fee. The fee paid to Utility by AWR for Services rendered pursuant to this Agreement shall be equal to one hundred and fifteen (115%) percent of the Fully Distributed Costs incurred by Utility in providing the Services except for billing and collection services. The Fee for billing and collection services rendered by Utility, as set forth in Paragraph 6.1.3 below, shall be at a rate of \$.10 per customer per monthly billing period and apply in the aggregate to customers participating in one or more of AWR's Programs. The \$.10 rate may be adjusted from time to time as determined by the ACC to be consistent with any other such billing and collection service rates charged by Utility, under tariff, to others.

4.2 Allocation by Regulating Authority. Notwithstanding the fee schedule contained in Section 4.1, should the ACC disallow any cost of the Utility in excess of the Fully Distributed Costs as a result of the services provided to AWR pursuant hereto, AWR shall reimburse Utility for such disallowed costs, within thirty (30) days of receipt of notice of same and the fees due pursuant hereto shall be adjusted to reflect such allocation by the ACC.

#### 4.3 Reporting and Payments.

4.3.1 Utility shall maintain detailed records of all costs incurred in providing services to AWR. Utility will make such detailed records available for AWR's periodic review upon request by AWR, during normal business hours, at Utility's principal office.

4.3.2 Utility shall invoice AWR monthly or quarterly, at Utility's discretion, for the fee for services on or about the tenth business day of each billing period during the term of

this Agreement. The invoice shall detail the services provided and the costs incurred. AWR shall pay such fee to Utility within fifteen (15) days of the date of the invoice.

#### SECTION 5. Taxes.

Any tax or other amount which Utility may be required to pay to or collect for a government agency upon or with respect to the Services rendered hereunder, or the use or delivery of any products or parts thereof on behalf of AWR, except income taxes, will be billed to AWR as separately stated charges and will be paid by AWR in addition to the fees paid pursuant to Section 4. In the event AWR disputes the taxability of an item hereunder, Utility will continue to collect such tax unless and until AWR provides Utility with documentation authorized and prescribed by the taxing authority, such as a certificate of exemption, relieving Utility from liability for the collection and payment of such tax.

#### SECTION 6. Scope of Services.

6.1 Utility agrees that it shall provide the following customer support services for the Programs in accordance with the terms and provisions of this Agreement:

~~6.1.1 Distribution of Promotional Materials. Upon request of AWR, Utility shall manage and direct the distribution of informational and promotional materials regarding the Program to its customers. Such materials shall be developed by AWR and provided to Utility in sufficient quantities and in a timely manner so as not to impede any planned distribution efforts by Utility. The materials shall be distributed as a part of Utility's normal billing process, unless arrangements are made, at least sixty (60) days in advance, for a special mailing. The materials provided by AWR must be satisfactory in form and content to Utility, and nothing in this Agreement shall require Utility to distribute any materials that are not satisfactory to Utility. Utility shall make all reasonable efforts to promptly notify AWR when additional quantities of~~

~~promotional materials are needed. Utility shall have the sole discretion to determine the customers who will receive the informational and promotional materials for the Program.~~

6.1.1 Reserved.

6.1.2 Notification of Claim. Should a Utility associate, as a part of his/her normal duties, determine that a Utility customer has a covered occurrence with the Customer's water or sewer service line, the Utility associate shall notify AWR by calling a toll-free telephone number to be supplied by AWR. AWR shall then engage a qualified contractor to provide the covered services to the customer. AWR shall timely provide the necessary information to cause Utility's customer records to reflect when coverage is available.

6.1.3 Billing and Collection. AWR shall provide Utility with a list of enrolled customers in its Programs who have chosen to have charges from AWR included on their bill from Utility, and shall keep such list up to date. Utility shall include such charges on the customer's bill and collect such charges from the customer until such time as the customer or AWR notifies Utility that the customer is no longer receiving service from AWR or has elected a different payment option. Utility shall forward collected payments from enrolled customers to AWR within fifteen days following the end of each calendar month for amounts collected during such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.

~~6.1.4 Other Services. Utility shall perform such other and further services as are agreed to in a Service Order in the form attached hereto as Exhibit 1 executed by the parties during the Term hereof.~~

SECTION 7. Provision of Information.

Except as provided herein, any specifications, diagrams, sketches, models, examples, tools, computer or other apparatus, programs, software, technical or business information, written, oral or otherwise (all hereinafter collectively referred to as "Confidential Information"), furnished by one party (hereinafter referred to as the "Disclosing Party") to the other party (hereinafter referred to as the "Receiving Party") under this Agreement or in contemplation of this Agreement will remain the property of the Disclosing Party and will be held Confidential by the Receiving Party. All copies of such information will be returned to the Disclosing Party upon request. The Receiving Party, and any individual assigned by the Receiving Party will not permit the duplication, use or disclosure of the Confidential Information whether such disclosure be oral, written, in the form of computer tapes, drawings or other medium to any person other than the Receiving Party's employees, agents or representatives who must have such information to provide the Services, unless otherwise specifically authorized in writing by the Disclosing Party.

Confidential Information does not include any information which, at the time of disclosure, is generally known by the public, is rightfully obtained from third parties, is independently developed by the Receiving Party and any individual assigned by the Receiving Party outside the scope of its performance herein, or had been in the possession of the Receiving Party and any individual assigned by the Receiving Party prior to its commencement of the performance of its services.

The Receiving Party and any individual assigned by the Receiving Party agrees that: (1) this covenant not to disclose our use Confidential Information shall survive termination of this Agreement; and (2) it shall be liable for any and all breaches of such covenant by the Receiving Party, its employees, agents or representatives, whether such breach occurs during or after the term of this Agreement.

The Receiving Party shall take such steps as may be necessary in order to limit access to the Confidential Information on a need-to-know basis and assure compliance by the employees, agents and representatives to whom such information is given.

The provisions of this section shall survive termination of this Agreement.

It is understood that the Receiving Party may be required to furnish information to judicial, regulatory, or administrative bodies. In such an event, the Receiving Party will promptly notify the Disclosing Party of such requirement and will cooperate with the Disclosing Party should the Disclosing Party desire to seek a protective order to prevent the public disclosure of its information.

#### SECTION 8. Compliance with Laws.

Both parties agree to comply with the provisions of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal and state laws, rules, regulations and codes with which they are obligated to comply in the performance of this Agreement, including the procurement of permits and certificates where needed. Both parties further agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap, and to comply with all applicable federal and state laws, orders, rules and regulations on this subject during the performance of this Agreement.

This Agreement shall be subject to any and all applicable federal, state and local laws, regulations, and ordinances, as well as any applicable tariffs. To the extent necessary, the parties

agree to amend this Agreement to conform to the requirements of any such laws, regulations, ordinances, or tariffs.

AWR shall provide Utility with evidence reasonably requested by Utility to demonstrate compliance herewith.

SECTION 9. Insurance.

9.1 AWR shall, during the term of this Agreement, maintain the following insurance coverages with respect to the Programs, and shall include Utility as an Additional Insured:

9.1.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$2,000,000, combined single limit.

9.1.2 Comprehensive Automobile Liability with limit of \$2,000,000, combined single limit.

9.1.3 Excess Commercial General and Automobile Liability with limit of \$2,000,000, excess of \$2,000,000.

9.2 AWR shall cause each contractor it engages to perform services under the Programs (collectively "Repair Contractors"), during the term of this Agreement, to maintain the following insurance coverages with respect to the Programs, which coverages in subsections 9.2.1-9.2.3 shall include Utility as an Additional Insured:

9.2.1 Commercial General Liability, including Products and Completed Operations, and Contractual Liability with limit of \$1,000,000, combined single limit.

9.2.2 Comprehensive Automobile Liability with limit of \$1,000,000, combined single limit.

9.2.3 Excess Commercial General and Automobile Liability with limit of \$1,000,000, excess of \$1,000,000.

9.2.4 Workers Compensation coverage with Statutory Limits.

9.3 AWR shall, and shall cause its Repair Contractors to, furnish Utility with certificates of insurance evidencing coverage as required by this Paragraph.

SECTION 10. Obligations of AWR.

10.1 Development of Informational Materials. AWR shall be responsible for developing, producing, and printing all informational materials for the Programs.

10.2 Training. At its sole cost, AWR shall provide all necessary training and information to Utility personnel as is necessary to allow Utility to fully perform hereunder. Such training will be specific to educating Utility employees in the operation, terms, and conditions of the Programs. Utility shall make the necessary arrangements to provide a location for such training at or near Utility's facilities.

10.3 Contractors. AWR shall be responsible for engaging qualified independent contractors to perform the services included in the Programs. AWR shall contract with and maintain a sufficient number of contractors to perform promised services under the Programs, during the term of this Agreement. The cost of all services provided by such contractors shall be paid by AWR. Nothing in this Agreement shall be deemed to create any obligation on the part of Utility to undertake performance of any such services or pay for such services by the contractors engaged by AWR.

10.4 Administration. AWR shall be responsible for coordinating all administrative activities for the Programs and its customers including, but not limited to, enrollments, billings, accounting, marketing, financial analysis and reporting. AWR shall promptly notify Utility of customer enrollments in the Programs, including any changes in enrollment or billing status.

SECTION 11. Joint Obligations of the Parties.

11.1 ~~11.1~~—AWR and Utility agree to cooperate to review existing planning, management and operations practices for the Programs.



11.2 Utility will not provide any customer-related information to AWR, except for information concerning a customer who has advised Utility that he or she has enrolled in one of the Programs and that is reasonably related to AWR's administration of the Program, including billing and collection of Program fees. This information will not include customer consumption data or information concerning the customer's payment history for utility services.

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#### SECTION 12. Arbitration.

It is the stated intent and purpose of both parties at all times to reach agreement by negotiation between AWR and Utility, without recourse to arbitration. In the event, however, that such dispute or difference is not settled, either party may request that the matter be referred to arbitration. The demand for arbitration must be submitted to the American Arbitration Association within sixty (60) calendar days after the date of such request, in which case the arbitration shall cover and resolve any then existing controversy or claim between the parties hereto which directly or indirectly arises out of or relates to this Agreement. The arbitration shall be conducted in Voorhees, New Jersey in accordance with the rules and procedures then existing under the Commercial Arbitration Rules of the American Arbitration Association, provided that notwithstanding anything to the contrary contained in such Rules the following shall apply: The arbitration board shall consist of three arbitrators. AWR shall choose one arbitrator and Utility shall choose one arbitrator. If the two arbitrators appointed by the parties fail to agree within five (5) business days upon the selection of a third arbitrator, the third arbitrator shall be selected from a list of arbitrators supplied by the American Arbitration Association or otherwise in accordance with such Rules. After the appointments of the third arbitrator, the arbitration board shall meet as necessary for the purpose of reaching a

determination in the dispute or difference, and the decision of the majority of the board, submitted in writing, to AWR and Utility shall be final and binding upon both parties. Judgment upon any decision rendered by such arbitration board may be entered in any court having jurisdiction. Each party shall bear the expense of its own arbitrators and witnesses, and the expenses of the third arbitrator and any general expenses of the arbitration shall be born equally by both parties.

SECTION 13. Force Majeure.

If, because of any act or occurrence beyond the reasonable control of either party, including, without limitation, acts of God, legislation or lawful regulations of any governmental body, court orders, fire, flood, explosion, strikes, labor disputes or shortage, wars or civil commotion, either party is reasonably prevented from performing any or all of its obligations hereunder, and if the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned Force Majeure, any time or date limitations shall be extended to the extent such party is so prevented.

SECTION 14. Assignments.

This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to an affiliate or successor of either party.

SECTION 15. Amendments.

This Agreement may be modified only by a written amendment signed by both parties.

SECTION 16. Notices.

All notices provided for in this Agreement shall be in writing and shall be deemed to have been given when hand delivered or deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, as follows:

If to AWR:

If to Utility:

American Water Resources, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08043  
Attention: Graham Wood, President

Arizona American Water Company  
19820 North 7th Street, Suite 201  
Phoenix, Arizona 85024  
Attention: Rob Kuta, Vice President

SECTION 17. Governing Law.

This Agreement, including the validity thereof and the rights and obligations of the parties thereunder, shall be construed in accordance with, and governed by the laws of the State of New Jersey.

SECTION 18. Indemnification.

18.1 AWR shall, and shall cause its Repair Contractors to, defend, indemnify and hold harmless Utility, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of AWR, its Repair Contractors, or their respective officers, employees, agents, contractors, and subcontractors in connection with the services rendered to Utility by AWR pursuant to the terms of this Agreement.

18.2 Utility shall defend, indemnify and hold harmless AWR, its officers, directors, employees and agents from and against any and all liability, including liability to third parties, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of negligence or wrongful or willful misconduct on the part of

Utility, its officers, employees, agents, contractors, and subcontractors in connection with the services rendered to AWR by Utility pursuant to the terms of this Agreement.

SECTION 19. No Waiver.

The failure of a party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

SECTION 20. Severability.

In case one or more of the covenants, terms or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed and the remaining covenants, terms, and provisions shall remain in full force and effect.

SECTION 21. No Third-Party Beneficiaries.

No customer of the Programs, contractor of AWR, or any other third party shall be deemed a third-party beneficiary of this Agreement.

SECTION 22. Independent Contractor.

It is understood that the relationship of Utility to AWR is that of an independent contractor and not that of an employee and or agent of AWR. None of the employees or agents of Utility shall be considered employees of AWR. None of the employees or agents of AWR shall be considered employees of Utility. Each party shall be wholly responsible and liable for the employment taxes and withholdings due as a result of their performance hereunder.

SECTION 23. Complete Agreement.

This Agreement sets forth the entire understanding of the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter hereof and may not be modified except in a writing executed by both parties.

SECTION 24. Titles and Headings.

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

SECTION 25. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 26. Condition Precedent.

This Agreement may be conditioned upon any necessary approval of the ACC.

SECTION 27. Limitation of Liability.

**NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, ATTRIBUTABLE TO OR RESULTING FROM ITS PERFORMANCE HEREUNDER.** In no event will Utility's liability for damages caused by its failure to supply material or perform services in a proper or timely manner exceed the amount paid by AWR to Utility for such materials or services.

SECTION 28. Non-Exclusive

This Agreement is non-exclusive and Utility may enter into similar agreements with other

entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

AMERICAN WATER RESOURCES, INC.

By: \_\_\_\_\_  
President

ARIZONA AMERICAN WATER COMPANY

By: \_\_\_\_\_  
Vice President

## APPENDIX A

### Water Line Protection Program:

For a periodic fee, Utility customers may enroll in the Water Line Protection Program that, subject to its terms and conditions, provides a service to repair customer-owned water lines that leak or break due to normal wear and tear.

### Sewer Line Protection Program:

For a periodic fee, Utility customers may enroll in the Sewer Line Protection Program that, subject to its terms and conditions, provides a service to clear or repair blocked customer-owned sewer lines that become clogged or blocked due to normal wear and usage.

SERVICE ORDER

~~American Water Resources, Inc. (AWR) hereby engages Arizona American Water Company (Utility) to perform the following services, pursuant to the Agreement for Support Services executed between the parties on March 2, 2005:~~

~~Water and Sewer Line Protection Programs:~~

- ~~1. Distribution of Promotional Materials. See Section 6.1.1 for scope of services.~~
- ~~2. Repair Service Initiation. See Section 6.1.2 for scope of services.~~
- ~~3. Distribution of Customer Surveys. From time to time, AWR may develop customer surveys designed to measure customer satisfaction with the Programs, and if necessary, make Program enhancements. AWR shall submit such survey materials to Utility for review and comment prior to distribution to customers.~~
- ~~4. Billing and Collecting. Utility shall bill each of its customers who AWR identifies as having requested service and billing from Utility by a line item on the customer's water bill. AWR shall furnish reasonable evidence that a customer has requested the service to Utility upon Utility's request. Utility shall collect payments from the enrolled customers and forward same to AWR within fifteen days following the end of each calendar month for amounts collected during such month. All payments made by the customer shall be credited first to payment of any amount owed for utility service furnished by Utility; any remainder shall first be credited to payment of any amount owed for utility service furnished by someone other than Utility but shown as a line item on the bill sent to the customer by Utility; and any remainder shall then be credited to payment of any amount owed to AWR. Utility shall not interrupt, cease or refuse utility service to a customer for non-payment of amounts owed to AWR. AWR shall be responsible for all collection efforts for non-payment by Utility customers for AWR Programs.~~

~~AMERICAN WATER RESOURCES, INC.~~

By: \_\_\_\_\_  
President

~~ARIZONA AMERICAN WATER COMPANY~~

By: \_\_\_\_\_

Vice President

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**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-2**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-2

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- Q. Page 12, lines 20 and 21. What is the "other means" by which AWR will obtain the mailing list?
- A. AWR will purchase from commercial list compiler vendors residential consumer names and addresses for those individuals living in the same general areas as Arizona American Water's service territories. Arizona American Water will not participate in this process.
-

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-3**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-3

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Q. Page 15, line 7. Provide examples of "unexpected service not covered by the customer charge..."

A. We cannot provide any examples of such services at this time. Services that would be covered by the 115% of fully-distributed-cost charges would include:

1. All direct costs, a contribution to common costs, and overhead associated with the actual time for a service technician to call/advise AWR about customer-owned service line problems. This is expected to be minimal because AWR will provide the Company a list of enrollees, which will be available to the technician, if the technician determines that the customer needs to have his/her water or sewer line serviced.
  2. Referral of any billing or service-related calls to AWR's dedicated service representatives. These charges are also expected to be minimal.
-

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-4**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-4

- 
- Q. Direct testimony of Linda Jaress pages 4 and 5. Provide a similar list of the functions of each entity resulting from the modified Agreement as proposed by the Company with changes highlighted.
- A. Arizona American Water would only provide the services numbered 1, 4, and 5 on page 4. AWR would take over responsibility for Company items 2, 3, and 6 and retain responsibility for AWR items 1-9. The contractor's responsibilities would not change.
-

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-5**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-5

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- Q. Attachment to the Company's testimony. Will the "fine print" be on the back of the enrollment form or on a separate page?
- A. The terms and conditions for each Program will be imprinted on the reverse side of the customer letter.

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-6**

Response provided by: Clifford C. Groh  
Title: Director Business Development and Operations  
Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-6

---

- Q. Page 11, line 4. If Service Company handles Arizona American's billing, then how has AWR "already paid for software to add a line on a bill"?
- A. In 2001, AWR paid for the development and implementation of programming modifications to the Service Company billing system to provide New Jersey American Water utility customers a line item water bill option to pay Program fees. The billing system modifications were developed in such a way that they could be reused to provide the same water bill option to American Water utility customers in other states. Therefore, the Service Company will not have to purchase or install any new software to add a line item charge for AWR Program fees that appear on an Arizona American Water bill.

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 7-7**

Response provided by: Clifford C. Groh

Title: Director Business Development and Operations

Company Name: American Water

Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043

Company Response Number: AAW S7-7

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- Q. Page 11 lines 20 and 21 and page 12, lines 1 and 2. Does this mean that the \$0.10 per customer per month will cover all services provided by Arizona American to AWR?
- A. No. Please see Response AAW S7-4, above. Company services 4 and 5 would remain subject to the 115% of fully distributed cost charge.

LEGAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONER  
JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

RECEIVED

2005 JUN 24 P 2: 26

AZ CORP COMMISSION  
DOCUMENT CONTROL

JUN 24 2005

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF  
ARIZONA-AMERICAN WATER COMPANY  
FOR AN AFFILIATE AGREEMENT WITH  
AMERICAN WATER RESOURCES, INC.

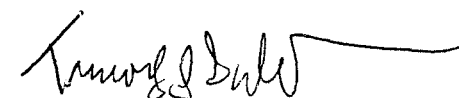
Docket No. WS-01303A-05-0170

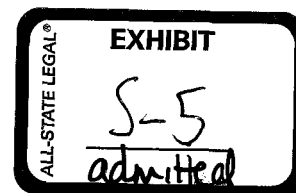
NOTICE OF FILING

The Arizona Corporation Commission Staff ("Staff") hereby files the Direct  
Testimony of Linda A. Jaress.

RESPECTFULLY SUBMITTED this 24th day of June 2005.

By

  
Timothy J. Sabo  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007  
(602) 542-3402



1 The original and thirteen (13) copies of the  
2 foregoing were filed this 24<sup>th</sup> day of  
June 2005 with:

3 Docket Control  
4 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

5 Copies of the foregoing were mailed this  
6 24<sup>th</sup> day of June 2005 to:

7 Craig A. Marks  
8 Corporate Counsel  
101 Corporate Center  
19820 N. Seventh St., Suite 201  
9 Phoenix, Arizona 85024

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**DIRECT  
TESTIMONY  
OF**

**LINDA A. JARESS**

**DOCKET NO. WS-01303A-05-0170**

**IN THE MATTER OF THE APPLICATIONS OF  
ARIZONA AMERICAN WATER COMPANY  
FOR APPROVAL OF AN AFFILIATE AGREEMENT  
WITH AMERICAN WATER RESOURCES, INC.**

**JUNE 24, 2005**

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
MARC SPITZER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

N THE MATTER OF THE APPLICATION OF )  
ARIZONA AMERICAN WATER COMPANY )  
FOR APPROVAL OF AN AFFILIATE )  
AGREEMENT WITH AMERICAN WATER )  
RESOURCES, INC. )

DOCKET NO. WS-01303A-05-0170

DIRECT  
TESTIMONY  
OF  
LINDA A. JARESS  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

JUNE 24, 2005

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**EXECUTIVE SUMMARY**  
**ARIZONA AMERICAN WATER COMPANY**  
**DOCKET NO. WS-01303A-05-0170**

This testimony reviews, analyzes and provides conclusions and recommendations regarding the application of Arizona American Water Company to enter an agreement with its affiliate, American Water Resources, Inc. The Agreement provides the terms and conditions under which Arizona American would provide certain services to the American Water Resources related to the Water and Sewer Line Protection (insurance) Programs that American Water Resources intends to offer to Arizona American's customers.

Staff concludes that Arizona American has not shown that it is in the public interest for Arizona American to enter the Agreement as proposed and this testimony discusses several reasons that support that conclusion. Furthermore, Arizona American has not shown why the Programs could not be offered by American Water Resources without any promotion or assistance from Arizona American.

However, if costs are appropriately allocated, Arizona American's participation in the Agreement and the Programs could ultimately reduce its revenue requirement. Thus, if the Commission determines that the Agreement is in the public interest and approves the Agreement, Staff requests that Commission also adopt nine conditions and requirements. The conditions and requirements address, among other issues, privacy concerns, appropriate compensation for Arizona American services, the initial life of the Agreement and rate case treatment of income from those services.

1 **Introduction**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Linda A. Jaress. I am an Executive Consultant III in the Utilities Division of  
4 the Arizona Corporation Commission ("ACC" or "Commission"). My business address  
5 is 1200 West Washington Street, Phoenix, Arizona 85007.  
6

7 **Q. Please state your educational background and professional experience.**

8 A. I received a Bachelor of Arts Degree from Michigan State University and a Master of  
9 Business Administration Degree from the University of Hawaii. I was employed as a  
10 Research Analyst for the Hawaii Trucking Association from 1977 through 1978 and as a  
11 Financial Analyst for the State of Hawaii, Division of Consumer Advocacy from 1980  
12 through 1985. In 1985, I was employed by the Arizona Corporation Commission  
13 ("Commission") as a Senior Rate Analyst and received a promotion to Manager,  
14 Financial Analysis in 1991. I also served as the Acting Chief of the Accounting and  
15 Rates Section. On January 1, 2001, I was promoted to the position of Executive  
16 Consultant III.  
17

18 **Q. Please list your duties and responsibilities as Executive Consultant III.**

19 A. I complete special projects for the Director and Assistant Directors.  
20

21 **Q. What is the purpose of this testimony?**

22 A. The purpose of this testimony is to review, analyze and provide Utilities Division Staff  
23 ("Staff") recommendations to the Commission regarding the application of Arizona  
24 American Water Company ("Arizona American" or "the Company") to enter an  
25 agreement with its affiliate, American Water Resources, Inc. ("AWR"). The affiliate

1 agreement, the Agreement for Support Services ("the Agreement"), requires Arizona  
2 American to provide certain services to AWR related to water and sewer line insurance  
3 programs ("the Programs") which AWR intends to offer to Arizona American's  
4 customers.

5  
6 **Q. What is the significance of this application?**

7 A. Although the costs and revenues Arizona American might experience from its services  
8 related to the Programs are likely to be very small compared to its 2004 utility revenues  
9 of \$55.2 million, the Programs are the first of their kind offered to utility sewer and water  
10 customers in Arizona. The outcome of this case could serve as a template for similar  
11 arrangements between water and sewer utilities and their affiliates in the future.

12  
13 **Q. Please describe Arizona American and AWR.**

14 A. Arizona American provides water and/or sewer service to over 121,000 customers in  
15 Arizona. AWR and Arizona American are subsidiaries of American Water Works  
16 Company whose ultimate parent is RWE AG, a company organized under the laws of the  
17 Federal Republic of Germany. According to the 2000 Annual Report of American Water  
18 Works Company, AWR was formed in January of 2000 "to offer water and wastewater  
19 related products and services to residential, governmental or business consumers." AWR  
20 has instituted similar water and sewer line insurance programs in eleven other states.

21  
22 **Description of the Programs**

23 **Q. Please describe the Programs and how they will be marketed to customers.**

24 A. For \$60 per year, the customer would receive insurance from AWR of \$4,000 against  
25 leaks and breaks in the customer-owned water service line between the customer's house  
26 and the Company's meter. The leaks or breaks must be caused by "normal wear and

1       tear.” The sewer line insurance Program insures against clogs and blockages in the  
2       customer’s portion of the sewer line and would cost \$108 per year. The charges would  
3       appear on the customer’s Arizona American bill.

4  
5       An introductory letter from the president of Arizona American along with other  
6       promotional materials describing the Programs and an application form would be sent to  
7       Arizona American residential customers. Customers who wish to enroll in the program  
8       could send in the completed application or call the telephone number shown. When a  
9       customer who has enrolled in the water Program suspects a break or a leak in the water  
10      line, the customer would call Arizona American who would dispatch an Arizona  
11      American field representative. If a break or leak is found between the home and the  
12      meter (the portion of the line that belongs to the customer), and the field representative  
13      discerns it to be from “normal wear and tear”, the field representative would call AWR.  
14      AWR would then dispatch a local, qualified contractor who, within 24 hours, would go to  
15      the customer’s premises and repair the leak.

16  
17      There is no deductible for the water line Program. The cost of the repair up to \$4,000  
18      would be paid by the Program. The sewer line Program is identical except the sewer line  
19      Program covers the costs of clog removal in the sewer line from the resident’s property  
20      line to the house, and the sewer line program charges the customer a \$50 deductible per  
21      occurrence.

**Who Provides Which Services?**

**Q. What services will Arizona American provide to AWR that are related to the Programs?**

**A.** According to the application, the Agreement and responses to data requests, Arizona American would provide the following services to AWR:

1. Provision of accounting of Program monies collected through the water bill payment process and remittance to AWR.
2. Distribution of surveys developed by AWR to customers.
3. Distribution of promotional materials through normal billing process and through special mailings.
4. Notification of AWR with claim.
5. Referral of callers to AWR's dedicated service representatives.
6. Any other services that are agreed to by Arizona American and AWR.

**Q. What functions will AWR perform related to the Programs?**

**A.** According to the application, the Agreement and various responses to data requests, AWR will perform the following functions:

1. Develop form and content of the promotional materials and print them.
2. Make pricing decisions.
3. Handle customer inquiries, enrollment, renewals, cancellations and complaints.
4. Develop a list of local, qualified contractors to repair water and sewer lines, dispatch them to provide services and pay them for their services.
5. Provide Arizona American a list of enrolled customers.



6. Maintain commercial general liability insurance with limit of \$2.0 million and include Arizona American as an additional insured.
7. Train Arizona American utility personnel in the operation, terms and conditions of the programs.
8. Monitor and collect monies from customers who have not paid or are delinquent in the payment of the Program fees.
9. Provide dedicated service representatives to handle inquiries.

**Q. Which services will the plumbing contractor provide?**

A. According to the application, the Agreement and various responses to data requests, the plumbing contractor will provide the following services;

1. Make customer contact to imitate repair work.
2. Identify and locate the problem or problems covered by the Program.
3. Take pre- and post-repair photographs of work and existing features of the site.
4. Arrange for marking of existing utilities and coordinate with existing utilities.
5. Furnish flagpersons and traffic warning and control.
6. Excavation and excavation protection.
7. Handling of drainage and groundwater removal.
8. Service line repair for water contract and sewer line clearing or blockage repairs for sewer contract.
9. Backfill trenches and pits including ground restoration of existing surfaces.
10. Site cleanup and removal of surplus excavated material.

**Compensation of Arizona American Services**

**Q. Why is the method chosen to determine the appropriate amount of compensation of Arizona American for the services it provides to AWR important?**

A. The National Association of Regulatory Utility Commissioners ("NARUC") published Guidelines for cost Allocations and Affiliate Transactions. Within the guidelines, NARUC explained the significance of affiliate transaction pricing as follows:

"First, affiliate transactions raise the concern of self-dealing where market forces do not necessarily drive prices. Second, utilities have a natural business incentive to shift costs from non-regulated competitive operations to regulated monopoly operations since recovery is more certain with captive ratepayers. Too much flexibility will lead to subsidization. However, if the affiliate transaction pricing guidelines are too rigid, economic transactions may be discouraged.

**Q. How will Arizona American be compensated for its services?**

A. According to the Agreement, AWR will compensate Arizona American for its services in an amount equal to 115 percent of the fully distributed costs incurred by Arizona American in providing those services, except for billing and collection services which would be at a rate of \$0.10 per customer per monthly billing. When Staff requested the Company supply the costs and work papers used to determine the \$0.10 billing and collection rate, the Company responded that there are no documents supporting the determination and the \$0.10 per bill amount was developed through negotiations between AWR and New Jersey American Water Company in 2001 (Response to Staff 1-19).

There are several methods by which services performed by an affiliate can be priced. However, Arizona American chose to set its price to AWR for billing and collection services purely by negotiation. One disadvantage of applying a negotiated price to the transfer of services between affiliates is a negotiated price does not necessarily reflect the

1 costs incurred in providing the services. If the negotiated price of the services provided  
2 by Arizona American is lower than the cost of the services, then Arizona American  
3 would be improperly subsidizing its affiliate.

4  
5 The price of \$0.10 per monthly billing for billing and collection services seems especially  
6 low when compared to the billing charges on Arizona Public Service Company's  
7 unbundled tariff of \$0.062 per day (\$1.86 for a 30-day month) for a direct access  
8 customer. Qwest Communication's tariff indicates a charge for "bill rendering" of \$0.70  
9 per bill for its access customers. Bill rendering includes services similar to those  
10 provided by Arizona American to AWR such as preparation of the bill, mailing the bill  
11 and processing payments. However, the charge includes collection of past due amounts,  
12 a function that AWR will serve, not Arizona American.

13  
14 For services other than billing and collection, AWR will pay 115 percent of the fully  
15 allocated costs incurred by Arizona American. Fully allocated costs are comprised of the  
16 direct, indirect and joint costs of providing a service.

17  
18 **Q. What is Staff's recommendation regarding the compensation for the services of**  
19 **Arizona American by AWR?**

20 **A.** According to the NARUC Guidelines, "Generally, the price for services...provided by a  
21 regulated entity to its non-regulated affiliates should be at the higher of fully allocated  
22 costs or prevailing market prices." Staff supports this method because it would reduce or  
23 eliminate unfair subsidization of AWR's costs by Arizona American.

24  
25 In conformance with the NARUC Guidelines, Staff recommends that if the Commission  
26 approves the Agreement, that it order Arizona American to modify the Agreement to

1 reflect that the prices it charges AWR be at the higher of 115 percent of fully allocated  
2 costs or prevailing market prices, and that at its next rate case, Arizona American should  
3 provide information and workpapers showing the calculation of the market price and  
4 fully allocated costs. This method would apply to all costs including billing and  
5 collecting and replace the \$0.10 per bill amount

6  
7 **Q. Does the Agreement provide for compensation for the use of Arizona American's**  
8 **name in the AWR promotional materials or the use of customer-specific**  
9 **information?**

10 A. The Agreement does not provide for compensation of Arizona American for the use of  
11 either its name in AWR's promotional material or for the use of Arizona American's  
12 customer list. Staff will address the use of Arizona American's name in the promotional  
13 materials in a later section of this testimony

14  
15 Although few costs would be incurred by Arizona American to provide its customer list  
16 to AWR, there is a market for customer lists. Telephone companies, for example, sell  
17 their subscriber lists to yellow page directories. The Federal Communications  
18 Commission ("FCC") issued an Order on September 9, 1999 setting rates of from \$0.04  
19 to \$0.06 per listing as the "presumptively reasonable rate" for subscriber information.  
20 The \$0.04 represents the price of a base file subscriber list and \$0.06 represents the rate  
21 for subscriber lists that are updated as customers are added or deleted. Arizona American  
22 has estimated the fair market value of its customer names and addresses at \$0.04875 per  
23 customer which is about the middle of the range adopted by the FCC.

1 **Q. What is Staff's recommendation regarding compensation for the use of Arizona**  
2 **American's customer list?**

3 A. Staff believes the \$0.04875 per customer to be a reasonable approximation of the market  
4 value of Arizona American's customer list. Staff recommends that if the Commission  
5 approves the Agreement, the Commission order that the Agreement be modified to  
6 include the payment of \$0.04875 by AWR to Arizona American per customer for the  
7 base customer list and \$0.03247 per customer for updates. The ratio of the cost of the  
8 base list to the updates was derived by using the same ratio applied by the FCC for its  
9 "presumptively reasonable rate."

10  
11 **Profitability**

12 **Q. What level of pre-tax income does Arizona American expect to achieve annually**  
13 **from its participation in the Programs over the first four years of the Programs?**

14 A. In a confidential response to a Staff data request, Arizona American indicates it expected  
15 to experience a very low level of net income from providing services to AWR under the  
16 Agreement.

17  
18 **Q. How much pre-tax net income does AWR expect to achieve from offering the**  
19 **Programs in Arizona for the first four years?**

20 A. Arizona American would not provide the pre-tax net income expected to be earned by  
21 AWR from the Programs in Arizona on the grounds of relevancy. However, under a  
22 confidentiality agreement it provided the amount of revenue it expects to generate. By  
23 the fourth year of the Programs, the revenue is expected to be substantial.

1 **Q. Please estimate the amount of revenues that could be generated by the Programs.**

2 A. Also under the confidentiality agreement, Arizona American provided enrollment rates in  
3 other states where AWR has implemented the programs. For estimation purposes, Staff  
4 is using a range of 5 percent to 20 percent. If 5 percent of Arizona American's 121,000  
5 customers enroll in both the water and sewer line Programs, AWR will experience  
6 Program revenues of approximately \$1.0 million. If 20 percent enroll, over \$4.0 million  
7 will be generated.  
8

9 **Privacy Concerns**

10 **Q. What is Arizona American's policy concerning the dissemination of customer-**  
11 **specific information such as name, address, telephone number, usage, bill payment**  
12 **history, etc.?**

13 A. In data request S1-17, Staff asked Arizona American an identical question. Its response  
14 was:

15  
16 "Arizona American does not have a written policy concerning the  
17 dissemination of customer-specific information. Except in response to a  
18 request from a police agency or to a subpoena, the company never  
19 provides *usage or bill payment history* to any party. Arizona American  
20 would provide similar access, as AWR will have, to names, addresses,  
21 and telephone number, to a qualified non-affiliate offering a program  
22 similar to AWR's." [emphasis added]  
23

24 **Q. What does Staff conclude from this response?**

25 A. Staff concludes that unless otherwise ordered by this Commission, Arizona American  
26 will be sharing customer information with AWR and any non-affiliate offering a similar  
27 insurance program.

1 **Q. What is AWR's current policy regarding the dissemination of customer-specific**  
2 **information?**

3 A. In data request S1-18, Staff asked Arizona American an identical question. Its response  
4 was:

5  
6 "AWR does not currently disseminate customer-specific information to  
7 *non-affiliated* companies with the exception of the external marketing  
8 agency it engages to develop promotional materials, conduct marketing  
9 campaigns and provide analyses of campaign results. AWR maintains a  
10 formal agreement with its external marketing agency to treat any  
11 customer-specific information it may receive as confidential." [emphasis  
12 added]  
13

14 **Q. What does Staff conclude from this response?**

15 A. Staff concludes AWR plans to share Arizona American's customer information with a  
16 marketing agency.  
17

18 **Q. Did Staff verify the agreement between AWR and the marketing agency?**

19 A. Staff attempted to verify that AWR's formal agreement with its marketing agency  
20 addressed confidentiality. Staff requested a copy of the agreement in S2-7. In response,  
21 Arizona American did not supply the relevant agreement but responded that AWR is in  
22 the process of negotiating a new marketing agreement. Arizona American attached an  
23 unsigned "agreement form" and represented that it is used by AWR to engage external  
24 marketing agencies. Section 8 of the unsigned agreement form addresses the  
25 confidentiality issue and seems to protect against the distribution of customer-specific  
26 information. However, the last phrase of the section reads "...unless otherwise  
27 specifically authorized in writing by the Company".

1 **Q. What does Staff conclude about the unsigned agreement?**

2 A. Staff can only conclude that currently there is no agreement between AWR and its  
3 marketing agency(ies) protecting the customer-specific information of Arizona  
4 American's customers. Neither does the Agreement between Arizona American and  
5 AWR restrict the use of such information

6  
7 Staff recommends that the Commission condition any approval of the Agreement upon  
8 the filing of a signed contract between AWR and its marketing agency that prohibits the  
9 dissemination of the customer-specific information that AWR receives from Arizona  
10 American.

11  
12 **Q. What is Staff's recommendation regarding Arizona American's use of customer-**  
13 **specific information?**

14 A. Staff believes that a customer should have control over the dissemination of the  
15 information about that customer in Arizona American's data base. First, Staff believes  
16 that it is in the best interest of the customers to be informed about the customer-specific  
17 information that Arizona American intends to disseminate. Second, the customers should  
18 be contacted and affirmatively agree to allow the information to be disseminated before it  
19 is disseminated.

20  
21 In summary, Staff recommends that customer-specific information should not be released  
22 by Arizona American to an affiliate or non-affiliate unless the customer has been  
23 informed regarding what information would be released and the customer affirmatively  
24 responds to allow dissemination of that information. Non-response by the customer  
25 should not be considered consent. This recommendation should not apply to requests  
26 from police agencies or subpoenas.



**Breadth of the Agreement**

**Q. Please describe the Agreement between Arizona American and AWR.**

A. The Agreement sets forth the terms, conditions and obligations under which Arizona American will provide support services to AWR. The terms and conditions include terms of termination, compensation, scope of services, billing and collection, provision of information and indemnification.

**Q. Other than the sections previously discussed, what other section of the Agreement causes Staff concern?**

A. Section 6.1.4 Other Services allows "other and further services as are agreed to in a Service Order" to be provided by Arizona American to AWR. This section is very open-ended and allows for an infinite variety of services to be provided by Arizona American to AWR as long as both parties agree. These services could be uneconomic or services of dubious value to utility customers.

**Q. What is Staff's recommendation regarding the open-ended nature of the Agreement?**

A. Because this is Arizona American's first non-utility business venture with an affiliate, Staff recommends that if approved, the Commission order a modification to the Agreement to omit Section 6.1.4 and any other section that might allow for Arizona American to perform services for AWR other than those related to the Programs as outlined in the Agreement.

**Customer Confusion**

**Q. Please describe the promotional and enrollment material that Arizona American customers will receive regarding the water and sewer line insurance Programs.**

A. In response to Staff's data requests, Arizona American provided current promotional materials used in New Jersey where AWR offers the Programs. It is expected that similar materials would be used in Arizona. These materials are attached as Appendices 1 and 2.

The customers first receive a letter from the president of the utility (on utility letterhead using the utility's logo) promoting the Programs, on the back of which is the fine-print contract between the customer and AWR (see Appendix 1).

In addition to the letter/contract, a half-page application form entitled "Immediate Action Form" is included in the promotional materials (see Appendix 2). In the upper left hand corner of the form the AWR logo appears. When the customer signs the Immediate Action Form and sends it back to AWR, the customer will be enrolled in the Program. Above the signature line on the Immediate Action Form, and in small print, the customer is informed that "By signing this enrollment form you agree to all terms and conditions of the WATER LINE PROTECTION PROGRAM as outlined on the back of the letter."

**Q. How could these promotional materials confuse customers?**

A. First, the customer may not be clearly aware that they have signed a contract and could easily overlook the contract itself. This is possible because the contract is located on the back of the letter promoting the Programs. Furthermore, the contract is not labeled as a contract or, in fact, labeled at all, and is referred to in the other documents as "terms and conditions." There is no place for a signature on the contract itself. Thus, the customer enters a contract by signing a document that is not attached to the contract.

1 Finally, the back-page contract will be the customers' only copy of the terms and  
2 conditions of the offering. This practice of separating the contract from the customer's  
3 signature creates a physical, if not a psychological distance between the customer and the  
4 contract. The customer could easily discard the letter in the belief that once enrolled, the  
5 letter served no further purpose or forgets that the contract exists.

6  
7 It should also be noted that AWR's logo is the identical red sun setting over two blue  
8 waves as Arizona American uses for its logo (see Appendix 3 for a sample of Arizona  
9 American's logo). Both companies share the words "American" and "Water" in their  
10 names. Customers could easily miss the difference between the two companies or  
11 misunderstand which company is offering the service. Even if customers notice that the  
12 promotional materials are from two different companies, the strong association of the two  
13 in the same envelope, promoting the same Programs may result in the customer endowing  
14 AWR with a level of credibility and trustworthiness to which it may or may not be  
15 entitled.

16  
17 **Q. Has the Commission previously addressed the shared use of utility names and logos**  
18 **with competitive affiliates?**

19 **A.** Yes. In Decision No. 62416, dated April 3, 2000, the Commission approved APS' Code  
20 of Conduct to be used in its competitive activities. The Code of Conduct prevented the  
21 shared use of the APS name and logo by its competitive affiliate by saying, "The name or  
22 logo of APS as a utility distribution company shall not be used in promotional advertising  
23 material circulated by a Competitive Electric Affiliate." The Commission approved  
24 similar language for Tucson Electric Power in Decision No. 62767, dated August 2,  
25 2000.

26

1   **Q.   What are Staff's concerns over the type of language used in the promotional**  
2       **materials?**

3   A.   The language of the promotional materials, as in most advertisement, is given to  
4       hyperbole and written to stir the emotions. Next to the box that a customer checks to  
5       enroll on the sample Immediate Action Form supplied to Staff by Arizona American is  
6       the sentence, in red, "YES! I want *protection and peace of mind*". The introductory letter  
7       from the president tells prospective enrollees that the Program "can save you thousands  
8       of dollars and many sleepless nights."

9  
10      The Staff of the Illinois Commerce Commission expressed reservations about the  
11      language appearing on AWR and Illinois American's promotional materials during a  
12      proceeding similar to this in Illinois. The Staff recommended that some of the language  
13      in the promotional material be removed. Specifically, "countless hours of worry and  
14      hassle", "prevent unexpected repair bills" and "save you thousands of dollars" were  
15      worrisome phrases on the Illinois material. Ultimately, and for other reasons, the Illinois  
16      Commission denied the application.

17      The names AWR has chosen for the Programs are somewhat misleading. The "Water  
18      Line Protection Program" does not protect the water line and neither does the "Sewer  
19      Line Protection Program" protect the sewer line. The customer does not receive any kind  
20      of maintenance or "protection" services for the fees paid. What the customer pays for is  
21      insurance against the cost of repair of the line.

22  
23   **Q.   What does Staff recommend regarding the tenor of the language used in the**  
24       **promotional materials?**

25   A.   Due to the critical nature of the services which public utilities provide, they often hold a  
26       position of trust in the minds of customers. Arizona American should not devalue that

1 trust by endorsing a service the value of which is questionable and that is promoted using  
2 exaggerations and emotional language. Staff believes that Arizona American's name,  
3 logo or endorsement not be included in the promotion of the Programs. The Agreement  
4 should be altered to reflect this recommendation.

5  
6 **Commission Involvement**

7 **Q. Will the Programs, if instituted, have any affect on the Commission or Commission**  
8 **Staff?**

9 A. Yes, they will. The Commission's name, address and telephone number appears on all of  
10 Arizona American's bills. The charges for the Programs will also appear on the bill. In a  
11 dispute or problem with AWR, a customer may look to the Arizona American bill for  
12 information about who to call and will see the Commission's telephone number. The  
13 Commission's Consumer Services Section currently receives calls and complaints  
14 regarding disputes over the Linebacker program offered by Qwest Communications, Inc.  
15 which is somewhat similar to the Programs. Thus, it is expected that the AWR Programs  
16 will increase the number of calls taken by Commission Staff. If the Programs and  
17 Agreement are found to be in the public interest but subject to certain conditions, the  
18 Commission's Compliance Section will also be involved.

19  
20 Audits and accounting for Arizona Americans costs and revenue related to the Programs  
21 during the course of rate cases would be further complicated by the Programs and  
22 resulting in higher rate case expenses. Determination of the "fully allocated costs"  
23 incurred by Arizona American from its provision of services to AWR for the Programs  
24 can be a complicated and contentious issue and would increase the complexity and  
25 expense of Arizona American's rate cases. Rate case expenses are recovered through  
26 rates to customers and Arizona American's rate case expenses are significant. For

1 example, in Decision No. 67093 for Arizona American's most recent rate case, the  
2 Commission approved recovery of \$418,941 of rate case expenses, less than the \$715,000  
3 the Company requested.

4  
5 **Benefits**

6 **Q. What are the benefits that customers could experience from Arizona American's**  
7 **participation in the offering of the Programs?**

8 A. The primary beneficiary of the Programs would be AWR as it will likely profit  
9 substantially from the successful Programs. However, Arizona American's rate payers  
10 could also benefit from a successful program. If the price for all the services it provides  
11 to AWR is set at a level equal to Arizona American's fully allocated cost plus 15 percent,  
12 or market, whichever is higher, and the net income from those services is included above-  
13 the-line for ratemaking purposes, the Programs could result in a lower revenue  
14 requirement in the Company's next rate case. A lower revenue requirement translates  
15 into lower rates for customers.

16  
17 Also, there will be some customers who enroll in the Programs who may benefit when  
18 they have a coverable claim for water or sewer line leaks or breaks. For some customers,  
19 the Programs will ultimately prove economic.

20  
21 **Q. How can the Commission ensure that Arizona American's customers will benefit**  
22 **from their utility's involvement in the Programs?**

23 A. Staff recommends that if the Commission approves the Agreement, any net income  
24 derived by Arizona American from the services it provides AWR for the Programs be  
25 considered above-the-line for ratemaking purposes.

26

1 **Other Jurisdictions**

2 **Q. Has Arizona American received approval of similar support services agreements**  
3 **with AWR in other states?**

4 A. AWR provides the Programs in 11 other states. Eight of those states did not require  
5 approval for the utility to institute the programs through an affiliate agreement. The  
6 Pennsylvania Public Utilities Commission ("Pennsylvania"), the Corporation  
7 Commission of the Commonwealth of Virginia ("Virginia"), the West Virginia Public  
8 Service Commission ("West Virginia") and the Illinois Commerce Commission  
9 ("Illinois") required approval. Pennsylvania and Virginia approved the application.  
10 Illinois denied the application. In West Virginia, after testimony was filed and a hearing  
11 held, West-Virginia American withdrew its application. Although unsuccessful in  
12 receiving approval for the utility to enter the affiliate agreement in Illinois and West  
13 Virginia, AWR instituted the Programs anyway, but without the assistance of the  
14 affiliated utilities.

15  
16 The Virginia commission, when approving the agreement, conditioned the approval upon  
17 several actions on the part of Virginia American Water. The conditions included removal  
18 of and changes to contract language that related to pricing and to commission approval of  
19 future changes in the Programs or contract. The Virginia commission also limited its  
20 approval to five years. The testimony of the West Virginia Staff in the West-Virginia  
21 American docket expressed concerns over the cost allocations included in the agreement.  
22 As stated earlier, West Virginia-American Water Company ultimately withdrew the  
23 application.

24  
25 The Illinois Order in Docket No. 02-0101, dated September 16, 2003, denied Illinois  
26 American's petition for consent and approval of its affiliate agreement with AWR to

1 provide the programs. Its denial was based upon "...the open ended nature of the  
2 amended affiliate agreement...[and] the absence of any substantive evidence  
3 demonstrating that the WLPP is properly priced or is even legitimately necessary."  
4

5 **Similar Programs**

6 **Q Do other utilities provide similar non-utility programs and services?**

7 A. Yes. An internet search revealed that similar programs are fairly common in other states,  
8 especially in the northeast where freezing temperatures could reduce the life of a service  
9 line and many service lines are older. Artesian Water provides a water line insurance  
10 plan in Pennsylvania and Delaware for \$60 per year. For \$68 a year the Pawtucket Water  
11 Supply Board in Rhode Island offers a program called "Safety Valve". Its promotional  
12 brochure reminds homeowners, although in fine print, to check their homeowner's  
13 insurance policy to determine whether such repairs are covered. Rochester Public  
14 Utilities in New York provides a "Service Assured" program for \$1.99 per month.  
15 United Water, which serves portions of New Jersey as well as other states, offers a  
16 "LeakGuard" program to its New Jersey water customers. The enrollment forms indicate  
17 that United Water prices the insurance according to the water system to which the  
18 customer belongs. This insurance program covers "settling" as well as "normal wear and  
19 tear". The charge for a customer with a 1-inch meter ranges from \$54 per year up to  
20 \$210 per year depending on the system. United also clearly labels the customer contract  
21 "LeakGuard Service Contract" in bold print.  
22

23 Colorado Springs Utilities offers "Wastewater Backup Insurance" for interior damage  
24 from sewer backups and charges from \$4.00 per month for \$7,000 of coverage to \$9.00  
25 per month for \$50,000 of coverage. However, Colorado Spring's promotional material  
26 provides three questions customers should ask their insurance agent before signing up.



1 The three questions concern the insurance coverage and the limits of the coverage the  
2 customer may already have for claims of damage from wastewater backup.

3  
4 The Passaic Valley Water Commission of New Jersey does not offer similar Programs  
5 but instead repairs service line breaks itself for a flat fee of \$1,600 and gives customers  
6 three years to pay, interest-free.

7  
8 Hawaiian Electric Company offers a "Payment Protection" plan. For 6 percent of a  
9 customer's monthly Hawaiian Electric bill (11.7 percent for joint coverage) Hawaiian  
10 Electric will pay the customers electric bill after 30 consecutive days of involuntary  
11 unemployment, total disability or unpaid family leave of absence. The bill payment  
12 program is limited to \$500 per month for up to six months.

13  
14 **Affiliated Interest Rules**

15 **Q. Do the Commission's Public Utility Holding Company and Affiliated Interests rules**  
16 **apply to Arizona American and its affiliates?**

17 **A.** Yes. Arizona American is a Class A, investor-owned public utility to which the Holding  
18 Companies and Affiliated Interest Rules (A.A.C. R14-2-801 through 805) apply. AWR's  
19 and Arizona American's parent holding company, RWE AG, is a huge, European utility  
20 conglomerate serving over 100 million electric, gas and water customers in Europe and  
21 the Americas. According to an RWE AG publication, "Facts & Figures 2005", since its  
22 fiscal year 1999/2000, RWE AG has transacted 16 electric, 9 gas, 10 water and 5  
23 environmental services major acquisitions and 41 major divestments.

24  
25 Pursuant to the Rules, RWE AG is both a public utility holding company and an affiliate  
26 of Arizona American and, as such, must file a notice with this Commission when it

1 intends to perform a reorganization. A reorganization is defined by the Rules as the  
2 "acquisition or divestiture of a financial interest in an affiliate or a utility, or  
3 reconfiguration of an existing affiliate or utility's position in the corporate structure or the  
4 merger or consolidation of an affiliate or a utility."

5  
6 Neither RWE nor Arizona American has ever filed for any form of waiver from the  
7 Affiliated Interests Rules other than the requested waiver from the Rules when RWE  
8 acquired American Water Works, Arizona American's parent. Staff believes that  
9 Arizona American should file for an appropriate waiver from the Rules to clarify the type  
10 of transactions for which its parent, American Water, and its parent's parent, RWE,  
11 would need to file notice with this Commission of organizations and reorganizations of  
12 the public utility holding company.

13  
14 **Conclusion and Recommendations**

15 **Q. Is it in the public interest for the Commission to approve the Agreement?**

16 A. Staff does not believe that Arizona American has shown that the Agreement as proposed  
17 is in the public interest. The Company has not shown a need for the services offered  
18 through the Programs and it has not shown that the Programs could not be offered by  
19 AWR without any promotion or assistance from Arizona American. Arizona American's  
20 books and records would become more complicated due to increased allocations creating  
21 higher rate case expenses. Finally, The Programs, as described, are likely to cause  
22 confusion among Arizona American customers. Thus, Staff recommends denial of the  
23 Agreement.

24  
25 However, if the compensation by AWR and costs incurred by Arizona American are  
26 carefully tracked by Arizona American and examined by Staff within the context of a rate

1 case to insure that water and sewer customers are not subsidizing the Programs, the  
2 Programs could ultimately slightly reduce Arizona American's revenue requirement.  
3 Thus, if the Commission determines that the opportunity to slightly lower the Company's  
4 revenue requirement more than offsets the risks of over-allocating costs to the utility,  
5 finds the agreement is in the public interest and approves the agreement, Staff requests  
6 that the Commission adopt the following recommendations and requirements:

- 7  
8 1. A requirement that the Agreement be modified to indicate that  
9 Arizona American should be compensated for its services at 115  
10 percent of fully allocated costs or prevailing market prices,  
11 whichever is higher, and that at its next rate case, Arizona American  
12 should provide information and workpapers showing the calculation  
13 of the market price and fully allocated costs. This method would  
14 apply to all costs including billing and collecting and replace the  
15 \$0.10 per bill amount.  
16
- 17 2. The Commission should require Arizona American, before  
18 disseminating customer-specific information to an affiliate or non-  
19 affiliate, to inform the customer regarding what information would  
20 be released and for what purpose. The customer must affirmatively  
21 respond before such information is disseminated. Non-response by  
22 the customer should not be considered consent. This requirement  
23 should not apply to requests from police agencies or subpoenas.  
24
- 25 3. A requirement that the Agreement be modified to omit Section 6.1.4  
26 and any other section that might allow Arizona American and AWR  
27 to contract for additional services other than those specifically related  
28 to the water and sewer line Programs.  
29
- 30 4. A requirement that any net income derived by Arizona American  
31 from the services it provides AWR for the Programs be considered  
32 above-the-line for ratemaking purposes.  
33
- 34 5. A requirement that Arizona American not endorse or promote the  
35 Programs and that the Agreement be modified to so reflect.  
36
- 37 6. The initial life of the Agreement should be limited to three years.  
38 Extensions of the Agreement should be approved by the Commission.  
39

- 1                   7. The Commission reserves the right to examine the books and records
- 2                   of AWR in connection with the Programs.
- 3
- 4                   8. The Agreement should be modified to include a definition of fully
- 5                   allocated or fully distributed costs as including direct costs, a
- 6                   contribution to common costs, and overhead.
- 7
- 8                   9. Arizona American and RWE should be ordered to file for appropriate
- 9                   waivers of the Rules.
- 10

11   **Q. Does this conclude your direct testimony?**

12   **A. Yes, it does.**

13

Sample A Sample  
123 Any Street  
Anytown, US 01234  
|||

Dear Sample A Sample,

From one homeowner to another, I'm asking you to please take a few minutes now to learn about a simple program that can save you thousands of dollars and many sleepless nights.

**Costs for repairing your water line could amount to thousands of dollars.**

You may not realize it, but as a homeowner, you own the water line that runs through your property between the street and your home. At any time, normal wear and tear can cause your water line to leak or break, as shown on the enclosed diagram. You can't prevent it. You can't predict it. And with harsh winter temperatures coming, a frozen water line alone could increase your chances of a break or leak. Worst of all, most homeowner insurance policies do not cover repairing it, so you'll have to pay for it.

**For just pennies a day, you can be protected from unexpected worries and costs.**

In cooperation with our affiliate, American Water Resources, Inc., New Jersey American Water is pleased to introduce a special Water Line Protection Program to cover these unexpected costs and provide you with peace of mind. This also means that you won't have to spend hours searching for a qualified repair contractor — you can leave that up to the experts.

When you consider all the advantages, I'm sure you'll agree that this Program is one of the best opportunities available to you as a homeowner.

- Save up to \$4,000 in unexpected repairs for just pennies a day (\$5 a month)
- Enjoy peace-of-mind protection from one of the most experienced water resource managers in the country
- Eliminate the hassle of searching for a qualified repair contractor

We are pleased to make the protection you need and the peace of mind you deserve available to you while continuing to deliver the quality service you depend on from New Jersey American Water.

Please carefully read the Program terms and conditions on the back of this letter, and keep this information for future reference. Take advantage of this "Special Offer" and for just pennies a day, I'm sure you will agree that the Water Line Protection Program is a good value. So, I encourage you to complete the enclosed enrollment form today and protect yourself from the expense and worry that a broken water line can cause.

Sincerely,

Waller Jr

Walter Lynch  
President

P.S. For just pennies a day, you can save thousands of dollars and countless hours of worry and hassle. Enroll today!

*If you live in a dwelling such as a condo, duplex or townhouse please contact your local homeowners association to determine if you are responsible for your water line.*



## AMERICAN WATER RESOURCES, INC.

American Water Resources, Inc., an affiliate of New Jersey American Water, is dedicated to offering products and services that enhance those services currently offered by Your regulated water provider.

### WATER LINE PROTECTION PROGRAM

This agreement is between American Water Resources, Inc. and You, a participant in the Water Line Protection Program, hereinafter referred to as the "Contract" or the "Program." Please read the Contract and retain it for Your records.

### THIS AGREEMENT COVERS

American Water Resources, Inc.'s Water Line Protection Program will cover the cost for repair of Your Customer-Owned Water Line should you have a water leak caused by normal wear and tear.

### DEFINITIONS

**"Administrator"** means American Water Resources, Inc., 1410 Discovery Parkway, Alton, Illinois 62002. Toll Free 1-866-430-0819.

**"Confirmation Letter"** means the acknowledgement letter You will receive from Us following enrollment outlining Your Program specifications. The Confirmation Letter will include the following information:

Your Name  
Your Covered Address  
Your Customer Number  
Your Program Effective Date  
Your Program Term

**"Customer-Owned Water Line"** means the section of the single water supply line You own that runs from Your home to the connection owned by New Jersey American. It does not include any connections/extensions such as water lines to sprinklers and/or agricultural meters You may own or any section of the water supply line owned by others outside of this Agreement to which Your Customer-Owned Water Line is attached.

• If the meter is located inside Your home, it is the section of the water supply line from New Jersey American Water's street-side shut-off valve to the inlet side of the meter.

• If the meter is located outside Your home, it is the section of the water supply line from the outlet side of the meter to the shut-off valve inside Your home.

**"Effective Date"** means the date protection begins under the Program, which is thirty (30) days after Your Enrollment Date. Your Program Effective Date is listed on Your Confirmation Letter.

**"Enrollment Date"** means the date Your enrollment form is received, processed and confirmed by Us.

**"Lapse of Coverage"** means We requested payment from You for an additional Term or Your periodic Program fee and We did not receive Your full payment within thirty (30) days from the date said payment was due. The Program will lapse without notice.

**"Program"** means American Water Resources, Inc.'s Water Line Protection Program.

**"Term"** means the period of time, from the Program Effective Date, Your Program will be in effect. The Program Term is annual (12 months) unless it is terminated or cancelled sooner as provided herein. Your Program Term is listed on Your Confirmation Letter.

**"We," "Us" and "Our"** mean the Administrator.

**"You" and "Your"** mean a residential customer and customer of record of New Jersey American Water, the homeowner of a single-family residence and the purchaser of this Program.

### ELIGIBILITY FOR PROTECTION

You must be a residential customer, customer of record of New Jersey American Water and owner of the residence to which the Customer-Owned Water Line is attached. The Customer-Owned Water Line must be free of leaks and in working order prior to Your Enrollment Date in the Program. Homeowners in multi-unit dwellings such as condominiums, town homes, or duplexes are eligible for the Program only if they have ownership and maintenance responsibility for the dwelling's single water supply line. The Program is not available to any tenant who rents or leases a single-family residential home.

### PERIOD OF PROTECTION

Program Protection initiates thirty (30) days after Your Enrollment Date. Your protection will continue for the Term listed on Your Confirmation Letter. Your Program Term can automatically be extended provided You make timely payments to Us at the then-current annual Program fee. If You purchase additional Terms without a Lapse of Coverage, Your protection will remain the Program

Effective Date listed on Your Confirmation Letter. If the Program lapses as outlined under "Lapse of Coverage," You may re-enroll in the Program at any time subject to a new Enrollment Date and Effective Date.

### LIMIT OF PROTECTION

The maximum amount We will pay for any covered repair under the Program is \$4,000 per occurrence. Before the line is repaired, if a permit is required, We will obtain proper permitting before work will commence. We will provide basic site restoration to the repair area once the repair work is completed. Site restoration is limited to filling in, raking and reseeding, one time only. All repairs to Your Customer-Owned Water Line will comply with local water code requirements.

Any subsequent repair made within sixty (60) days of a prior covered repair will be considered as a part of that prior covered repair and limited to the \$4,000 per occurrence limit. If a permit was acquired to commence work on covered water lines and requires a sidewalk, located in a public easement, to be repaired, the Program will provide repair of said sidewalk up to \$500. Cost to repair sidewalks applies toward the Program \$4,000 maximum. You will not, unless at Your own expense, engage a contractor or otherwise incur costs to repair the Customer-Owned Water Line on Our behalf. You may neither transfer the Program to a new owner of the covered property nor transfer the Program to a different residence owned by You.

### THIS AGREEMENT DOES NOT COVER

- Damage to Customer-Owned Water Line incurred or existing prior to the Program Enrollment Date.
- Damage to Customer-Owned Water Line caused by the actions or negligence of You or third parties.
- Damage to Customer-Owned Water Line caused by natural disasters, or acts of nature, including, but not limited to, earthquakes, floods, landslides or sinkholes or any other insurable cause.
- Any section of the water supply line owned by others outside of this Agreement to which Your Customer-Owned Water Line is attached.
- Any consequential, incidental or special damages You incur including lost water, regardless of whether they are caused by delays, failure to service or for conditions beyond the control of the Administrator.
- Restoration of trees, shrubs, paved surfaces, or structures, for any reason.
- Any damage to finished or unfinished walls or surfaces inside Your home necessary to access and repair Your Customer-Owned Water Line.
- Leak repairs to any interior pipes beyond the shut-off valve inside Your home.
- Restoration of sidewalks not located in public easement. Also, restoration of sidewalks located in public easements but not required on the permit.
- Removal of debris necessary to access and repair Your Customer-Owned Water Line, including, but not limited to, old cars, trash, storage, rocks or materials.
- Movement of the meter at the time of repair, unless required by local code.
- Any rental dwellings for which Program enrollment is in the name of the tenant or any dwellings used for commercial purposes. (Unit owners please refer to "Eligibility for Protection.")
- Updating non-leaking pipes to meet code, law or ordinance requirements or changes thereto.
- Movement of working pipes and/or lines.

### YOUR RESPONSIBILITIES

If You suspect there is a water leak, call the toll-free number shown on Your water bill from New Jersey American Water who will investigate the source of the problem. In the event New Jersey American Water determines that the leak is to Your Customer-Owned Water Line, We will arrange to have an approved, independent contractor call You to set up a time to come out to Your home. The contractor will contact You within 12 hours for emergency service, or by 5:00 pm the next business day for all other service, to arrange for repair of Your Customer-Owned Water Line.

If a permit was acquired that requires repair to sidewalks located in public easements, and the cost to repair exceeds the Program maximum of \$500, it is Your responsibility to pay any additional costs. If repair cost to the Customer-Owned Water Line exceeds the Program maximum of \$4,000, it is Your responsibility to pay any

additional costs. Any costs in excess of the Program maximum will be stated to You before work is performed and We will send You an invoice for all expenses over any Program maximum. Beyond the previously outlined exceptions, You will not be charged any deductible or service call fees in conjunction with a covered repair. It is Your responsibility to secure permission (right-of-way) associated with gaining access to repair Your Customer-Owned Water Line that may pass through property that You do not own.

### ADMINISTRATOR'S RIGHTS

We reserve the right to change Your Program fee and/or the Program terms and conditions with thirty (30) days written notice to You. We reserve the right to transfer or assign Your Program contract. You grant Us the right to obtain customer of record information from New Jersey American Water limited to Your name, address and any other pertinent information. This information will not be sold to any outside marketing companies.

### CANCELLATION

You may cancel this Program at any time by mailing a cancellation request to American Water Resources, Inc., Attention: Water Line Protection Administrator, 1410 Discovery Parkway, Alton, Illinois 62002. If You cancel, the effective date of cancellation is the date We receive Your notice. You have thirty (30) days from Your Enrollment Date to cancel and receive a full refund of any payments made. Your Program participation will be subject to cancellation without notice once You are thirty (30) days past due on any payment for the Program. If Your Program protection has been cancelled due to non-payment, You may re-enroll in the Program with a new Enrollment Date and new Effective Date. We reserve the right to cancel the Program at any time upon ninety (90) days notice to You. Any refund as a result of the cancellation of the contract by either You or Us, will be determined on a prorated basis less the cost of any service performed under the Program. If You are owed a refund, it will be processed via the enrollment payment method You chose to join the Program.

### PAYMENT ARRANGEMENTS

You authorize Us to arrange for payment to be added to Your New Jersey American Water water bill. Your annual payment will be divided by the number of times per year that New Jersey American currently bills You. Your Program participation will be subject to cancellation without notice once You are thirty (30) days past due on any payment for the Program. Your payments to New Jersey American will first be applied to Your utility fees and lastly to Your Water Line Protection Program fees. Failure to make payments for the Program will not affect continuation of Your water utility service.

### TAXES

American Water Resources, Inc. will collect any and all appropriate taxes if required by the local municipal government(s), county government or the State of New Jersey. These taxes will be collected on each of Your periodic water bills from New Jersey American.

### LIMITATION OF LIABILITY

In the event that Your property is not eligible for coverage under the terms and conditions of the Program, our only obligation is to refund any payments made by You to Us. Once we have paid You this refund, the Program will be voided as of Your Enrollment Date. The liability of the Administrator, its affiliated companies, its officers, employees, contractors and/or agents to You, or to any other third party or person, for damages resulting from the provision of, or failure to provide services under this Program, or as the result of any fault, failure, defect or deficiency in any service, labor, material, work or product furnished in connection with this Program shall be limited to an amount not to exceed \$4,000. In no event, however, shall the Administrator, its affiliated companies, its employees, agents and contractors have any liability for special, indirect, incidental, consequential or punitive damages resulting from the provision of or failure to provide service under this Program, or from any fault, failure, defect or deficiency in any service, labor, material, work or product furnished in connection with this Program. These limitations of and exclusions from liability shall apply regardless of the nature of the claim or the remedy sought.

**THE WATER LINE PROTECTION PROGRAM IS NOT AN INSURANCE CONTRACT OR POLICY. THE PROGRAM PROVIDES FOR THE REPAIR OF LEAKS TO YOUR CUSTOMER-OWNED WATER LINE DUE TO NORMAL WEAR AND TEAR. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN AMERICAN WATER RESOURCES, INC. AND YOU, AND THERE ARE NO OTHER PROMISES OR CONDITIONS IN ANY OTHER AGREEMENT WHETHER WRITTEN OR ORAL.**

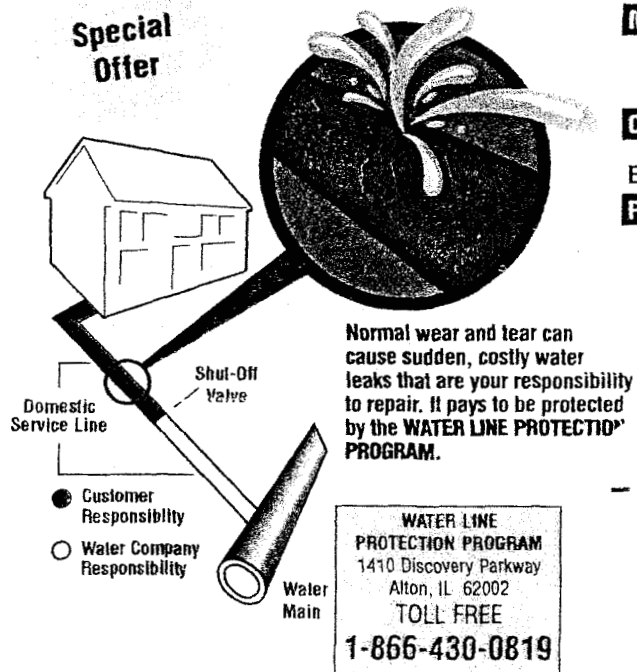
**American Water Resources, Inc.**  
**Water Line Protection Program**  
**1410 Discovery Parkway, Alton, IL 62002**  
**Toll Free 1-866-430-0819**

NJ WLPP 60/66 TC 0205

000000027



☐ **YES!** I want *protection and peace of mind*. Enroll me in the **WATER LINE PROTECTION PROGRAM** today.



## IMMEDIATE ACTION FORM

**NJ60025R**

**HOMEOWNER NAME:** Sample A Sample

**SERVICE ADDRESS:** 123 Any Street  
Anytown US 1234-2345

Reference Number: 9999999999999999

**MAILING ADDRESS:** 123 Any Street  
Anytown US 01234

**CONTACT INFORMATION:** Home Phone (required): ( ) -

E-mail: Work/Cell Phone: ( ) -

**PAYMENT OPTIONS:**

### ☐ ADD DIRECTLY TO MY WATER BILL

I authorize the amount of \$63.60 (\$60.00 plus \$3.60 NJ sales tax) to be added to my water bill in equal periodic payments over the next 12 months.

By signing this enrollment form you agree to all terms and conditions of the WATER LINE PROTECTION PROGRAM as outlined on the back of the letter. Confirmation of enrollment will be sent to the above mailing address. Coverage begins 30 days after enrollment form is received and confirmed by American Water Resources, Inc. The expiration date for this introductory offer is 04/30/05. After 04/30/05 call 1-866-430-0819 for current offer.

**X** Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Drought insert 4 7/23/02 4:57 PM Page 2

### How Will Water Supplies for Arizona-American Water Company be affected?

Arizona-American Water Company obtains its water supplies from groundwater wells and from the Colorado River via the CAP. These water supply sources have not been directly affected by Arizona's current drought.

However, if the drought continues and water users must rely more on groundwater reserves in the future, groundwater levels could decrease at a higher rate than experienced in the recent past.

### Are There Water Use Restrictions Planned for Arizona-American Customers I should know about?

No, not at this time. Arizona-American does not anticipate the need for any mandatory water use restrictions in response to the drought. As explained above, the company's water supply sources are not directly affected by the current low reservoir levels in many parts of the state.

### Water Conservation is Everybody's Full-Time Job

Even in times of plentiful rainfall-but especially in times of drought-wise use of our water resources is everyone's responsibility. That's why the "Water - Use It Wisely" campaign and Arizona-American's "SaveH2O" conservation program are there to provide our customers with useful tips on how to save water inside and outside the home. To learn more about how you can conserve water, call our Water Conservation Hotline at 623-815-3103, or visit us on-line at [www.saveh2oarizona.com](http://www.saveh2oarizona.com). We have enough water to use, but not enough to waste.

Thank you for using water wisely.



Arizona-American Water Company



Printed on recycled paper; each ton of recycled paper saves 7,000 gallons of water.



LEGAL

BEFORE THE ARIZONA CORPORATION COMMISSION  
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2005 AUG -5 A 9:46

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
ARIZONA-AMERICAN WATER COMPANY  
FOR AN AFFILIATE AGREEMENT WITH  
AMERICAN WATER RESOURCES, INC.

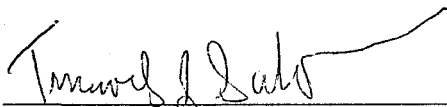
Docket No. WS-01303A-05-0170

**NOTICE OF FILING**

Utilities Division ("Staff") of the Arizona Corporation Commission hereby files the  
Rebuttal Testimony of Linda A. Jaress.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of August 2005.

By

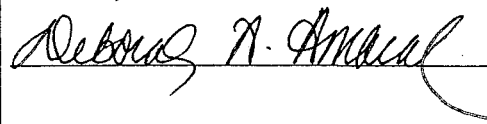
  
Timothy J. Sabo  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007  
(602) 542-3402

The original and thirteen (13) copies of the  
foregoing were filed this 5<sup>th</sup> day of  
August 2005 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copies of the foregoing were mailed  
this 5<sup>th</sup> day of August 2005 to:

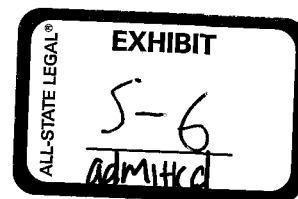
Craig A. Marks  
Corporate Counsel  
101 Corporate Center  
19820 N. Seventh St., Suite 201  
Phoenix, Arizona 85024



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AUG 05 2005

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION



BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
MARC SPITZER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. WS-01303A-05-0170  
ARIZONA AMERICAN WATER COMPANY )  
FOR APPROVAL OF AN AFFILIATE )  
AGREEMENT WITH AMERICAN WATER )  
RESOURCES, INC. )

REBUTTAL TESTIMONY OF

LINDA A. JARESS

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AUGUST 5, 2005

**EXECUTIVE SUMMARY**  
**ARIZONA AMERICAN WATER COMPANY**  
**DOCKET NO. W-01303A-05-0170**

This testimony lists the ten recommendations and requirements that Staff recommended in its direct testimony and discusses the response to them by Arizona American Water Company ("Arizona American") and American Water Resources ("AWR"). In general, the two companies agreed to several of Staff's recommendations regarding the Agreement between them for Arizona American to provide certain services to AWR related to water and sewer line insurance programs to be offered by AWR to Arizona American's customers.

Unresolved issues include the method by which Arizona American will determine its costs of providing services to AWR, the length of the initial life of the water and sewer line protection programs, and the requirement that Arizona American and its parent, RWE AR, file for appropriate waivers of the Affiliated Interests and Holding Company Rules.

Although the two companies' proposed modifications to the Agreement greatly reduce Staff's concerns about Arizona American's participation in the provision of the programs, the Company has not established a need for the programs or shown that Arizona American's participation is necessary or that the Agreement is in the public interest. Thus, Staff continues to recommend denial of the Agreement.

**Introduction**

**Q. Please state your name, occupation, and business address.**

A. My name is Linda A. Jaress. I am an Executive Consultant III in the Utilities Division of the Arizona Corporation Commission ("ACC" or "Commission"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

**Q. Did you file direct testimony in this case on June 24, 2005?**

A. Yes, I did.

**Q. Please summarize Staff's direct testimony.**

A. Staff's direct testimony reviewed and analyzed the Agreement between Arizona American Water Company ("Arizona American") and its affiliate American Water Resources ("AWR") (jointly "the Companies") for Arizona American to provide certain services to AWR related to its water and sewer line protection programs ("the Programs"). Staff recommended that the Arizona Corporation Commission ("Commission") not approve the Agreement as proposed because the Companies did not show the Programs were in the public interest, did not establish a need for the service nor show that Arizona American's participation in the Programs is necessary. However, Staff recommended the Commission adopt ten conditions should the Commission find the Agreement is in the public interest.

**Q. How did the Company respond to Staff's direct testimony?**

A. In its Joint Direct Testimony, the Companies significantly reduced Arizona American's participation in the provision of the Programs. The Companies proposed limiting Arizona American's participation to the inclusion of a line item on the bills of customers who participate in the programs, the referral of customers to AWR's service representatives for

1 enrollment in the Programs and the referral of claims to AWR. The Companies also  
2 indicated a willingness to alter the Agreement to omit Arizona American's provision of  
3 customer information to AWR.

4  
5 **Q. Please quote Staff's recommended ten conditions and requirements along with the**  
6 **Companies' responses to them. Also, where needed, please comment on the**  
7 **Company's modifications.**

8 **A.** The following are the conditions and requirements recommended by Staff for adoption by  
9 the Commission if the Commission finds the Agreement is in the public interest;

10  
11 *1. "A requirement that the Agreement be modified to indicate that Arizona American should*  
12 *be compensated for its services at 115% of fully allocated costs or prevailing market*  
13 *prices, whichever is higher, and that at its next rate case, Arizona American should*  
14 *provide information and workpapers showing the calculation of the market price and fully*  
15 *allocated costs. This method would apply to all costs including billing and collecting and*  
16 *replaces the \$0.10 per bill amount."*

17  
18 The Companies disagree with this recommendation not because they believe it is  
19 theoretically unsound but because they believe it is impractical. They point out that they  
20 have reduced the scope of services originally proposed to be provided by Arizona  
21 American to AWR. The Companies now state that no marketing will be performed by  
22 Arizona American. This will have the effect of limiting costs incurred by Arizona  
23 American to those costs related to providing line items on the customer's bill, forwarding  
24 calls for enrollment in the Programs and contacting AWR for claims.

1 Because the costs incurred by Arizona American will be less than originally contemplated,  
2 the revenues received by Arizona American for the services it would provide to AWR  
3 would be proportionately reduced. The Companies now believe that the cost of  
4 performing a study to calculate the fully allocated costs and market prices could exceed the  
5 annual revenue received by the Company for providing the reduced services.

6  
7 The Companies attempt to support the reasonableness of their proposed \$0.10 per customer  
8 per month charge by Arizona American to AWR for placing the line item on the utility bill  
9 not by comparing it to costs or market prices, but by comparing it solely to the \$0.08 that  
10 Arizona American pays another affiliate to provide for billing service. No analytical  
11 support of the reasonableness of the \$0.08 per customer per month amount was provided.

12  
13 Staff agrees that by eliminating marketing services from the Agreement, Arizona  
14 American's participation in the provision of the Programs will be significantly reduced  
15 along with associated costs and revenues. However, without a study of costs and market  
16 prices, Staff and the Commission would be unable to determine the fairness of the charges  
17 during Arizona American's rate cases, Staff continues to believe the recommendation is  
18 appropriate.

- 19  
20 2. *"The Commission should require Arizona American, before disseminating customer-*  
21 *specific information to an affiliate or non-affiliate, to inform the customer regarding what*  
22 *information would be released and for what purpose. The customer must affirmatively*  
23 *respond before such information is disseminated. Non-response by the customer should*  
24 *not be considered consent. This requirement should not apply to requests from police*  
25 *agencies or subpoenas."*

1 The Companies agreed that Arizona American will not provide any customer information  
2 to AWR and will not provide any marketing services whatsoever.

- 3  
4 3. *"A requirement that the Agreement be modified to omit Section 6.1.4 and any other section  
5 that might allow Arizona American and AWR to contract for additional services other than  
6 those specifically related to the water and sewer line Programs."*

7  
8 Section 6.1.4 of the Agreement contains language that allows for additional services  
9 unrelated to the Programs to be supplied by Arizona American to AWR by merely  
10 amending the Agreement. Staff was concerned that the utility would provide other  
11 services to AWR without the Commissions knowledge or approval. The Companies  
12 responded that they would accept this recommendation and remove the questionable  
13 language from the Agreement.

- 14  
15 4. *"A requirement that any net income derived by Arizona American from the services it  
16 provides AWR for the Programs be considered above-the-line for ratemaking purposes."*

17  
18 The Companies accepted this condition and noted that the net income would equal \$0.10  
19 per month per enrolled customer.

- 20  
21 5. *"A requirement that Arizona American not endorse or promote the Programs and that the  
22 Agreement be modified to so reflect."*

23  
24 The Companies accepted this recommendation and stated that Arizona American will not  
25 provide any marketing services to AWR for the Programs.

1 6. *"The initial life of the Agreement should be limited to three years. Extensions of the*  
2 *Agreement should be approved by the Commission."*

3  
4 The Companies agree with the concept of limiting the term of the Agreement but requested  
5 that the term of the Agreement be five years rather than three. The Companies requested  
6 five years because they feel at least three years are required to "set up, market and roll out  
7 the Protection Programs before it [AWR] achieves significant market shares" and that five  
8 years would allow the evaluation of results from years three through five when there would  
9 be enough participants to provide meaningful data.

10  
11 Staff believes that the manner in which Arizona American carries out its functions under  
12 the Agreement during the initial years of the Programs is equally important as the manner  
13 in which it carries out its functions after three years. Compliance with adopted  
14 recommendations regarding cost allocations are equally important over the initial three  
15 years as in year three through five. Thus, Staff maintains its recommendation for a three-  
16 year term of the agreement is reasonable.

17  
18 7. *"The Commission reserves the right to examine the books and records of AWR in*  
19 *connection with the Programs."*

20  
21 The Companies agrees that the Commission already has this right under the Public Utility  
22 Holding Companies and Affiliated Interests Rules ("the Rules").

23  
24 8. *"The Agreement should be modified to include a definition of fully allocated or fully*  
25 *distributed costs as including direct costs, a contribution to common costs, and overhead."*



1 The Companies accepts this condition for “unexpected service not covered by the customer  
2 charge to AWR of \$0.10 per month per enrolled customer at 115% of fully distributed  
3 costs.”

- 4  
5 9. *“Arizona American and RWE should be ordered to file for appropriate waivers of the*  
6 *Rules.”*

7  
8 The Companies object to this recommendation because they “do not understand the need  
9 for this recommendation and Staff has not suggested any waiver filings that might be  
10 required in connection with this case.”

11  
12 While Staff was reviewing the relationship of the affiliates involved in this case and  
13 determining whether this application required a waiver of the Rules, Staff could only find  
14 one Commission decision regarding a waiver of the Affiliated Interests and Holding  
15 Company Rules for Arizona American. The waiver which was granted in 2002 was a  
16 transaction-specific waiver for the merger of Arizona-American’s parent with a subsidiary  
17 of RWE AG. Staff also learned through a RWE AG publication that RWE AG has  
18 transacted many major acquisitions and divestitures since then. Rather than delay this case  
19 for a closer examination of the affiliate relationships and any transactions which may have  
20 required or will require Commission approval, Staff determined that an additional filing  
21 was necessary to determine RWE’s obligations under the Rules. Staff continues to offer  
22 the same recommendation.

- 23  
24 10. Within the body of Staff’s direct testimony, a 10<sup>th</sup> recommendation was made that was  
25 inadvertently excluded from the summary of nine recommendations at the end of the

1 testimony. Staff recommended that the Agreement be modified to include payment by  
2 AWR to Arizona American for use of its customer list. However, as previously  
3 mentioned, Arizona American has decided to not provide customer lists to AWR, making  
4 this recommendation moot.

5  
6 **Q. Is Staff revising the recommendations made in its direct testimony?**

7 **A.** No. Staff believes its recommendations remain reasonable. Although the Company's  
8 proposed modifications to the Agreement greatly reduce Staff's concerns about Arizona  
9 American's participation in the provision of the programs, in Staff's opinion, the Company  
10 has still not established a need for the service or shown that Arizona American's  
11 participation is necessary or in the public interest. Thus, Staff continues to recommend  
12 denial of the Agreement.

13  
14 **Q. Does this conclude your rebuttal testimony?**

15 **A.** Yes, it does.

**ARIZONA-AMERICAN WATER COMPANY  
SERVICE LINE PROTECTION PROGRAM  
DOCKET NO. WS-01303A-05-0170  
RESPONSE TO DATA REQUEST NO. STAFF 1-19**

Response provided by: Clifford C. Groh

Title: Director Business Development and Operations

Company Name: American Water  
Address: 1025 Laurel Oak Road  
Voorhees, NJ 08043



Company Response Number: AAW S1-19

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- Q. Provide how the \$0.10 per bill amount was determined including all workpapers, costs, customers, etc. used to calculate the amount (Agreement, Section 4.1.).
- A. There are no documents supporting this determination. The \$0.10 per bill amount was developed in the Fall of 2001 via negotiations between AWR and its affiliate New Jersey American Water Company (NJAM) to enter into an Agreement for Support Services for the Programs. At that time, NJAM determined that its cost for imprinting on a customer's water bill a single line item charge for the Program and a separate line item charge for applicable NJ State Sales Tax would be pennies per month.
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